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ABSTRACT

Three days of hearings held on the Reservation at Window Rock, Arizona focused on the civil rights of the people of the Navajo Nation. Seeking to explore those areas of economic and social development in which the Navajo could better attain self-determination, the Commission heard testimony on economic development, private employment, health care, and education. Among the witnesses were representatives from state and federal agencies, tribal officials and medical personnel. Testimony was offered by individuals as well as in panel discussions. Peter MacDonald, Chairman of the Navajo Tribal Council, listed control of the schools, economic development programs, and resource development as the basic and primary goals in attaining Navajo civil rights. He cited the slowness of the bureaucratic machinery as being particularly frustrating to tribal development plans. In a panel discussion a Bureau of Indian Affairs official and an anthropologist suggested that the Navajo should be viewed as an underdeveloped nation; help offered should then be considered as an aid to a developing nation rather than merely as another federal program. A panel of doctors and hospital administrators described the severe shortage of medical personnel, equipment, and facilities, citing inadequate funding as the causative factor. The lengthy session on education heard from school administrators, teachers, students, and parents the problems involved in educating the children and youth. (DS)

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OCT 2 3 1979

HEARING

BEFORE THE

UNITED STATES
COMMISSION ON CIVIL RIGHTS

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HEARING HELD
IN
WINDOW ROCK, ARIZONA

October 22–24, 1973

Volume I: Testimony

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U.S. DEPARTMENT OF HEALTH
EDUCATION & WELFARE
NATIONAL INSTITUTE OF
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U. S. COMMISSION ON CIVIL RIGHTS

MONDAY, OCTOBER 22, 1973

The U.S. Commission on Civil Rights convened, pursuant to notice, at 9:20 a.m. in the Window Rock Motor Inn, Window Rock, Arizona, Acting Chairman Stephen Horn presiding.

PROCEEDINGS

ACTING CHAIRMAN HORN. Ladies and gentlemen, as we open this hearing of the United States Commission on Civil Rights I would like to first swear various officials who will be participating in the hearing.

May I start with the two reporters, Miss Gibson and Miss Macias. If you will raise your right hands and repeat after me?

[The two court reporters were sworn.]

And now our interpreter, Dr. Samuel Billison.

[Dr. Billison was sworn.]

And now to the four clerks who will serve in an official capacity at this hearing.

[Ms. Lucy Edwards, Mr. Melvin Jenkins, Ms. Margaret Johnson, and Ms. Ramona Godoy were sworn.]

Thank you very much.

Ladies and gentlemen, I am Stephen Horn, Vice Chairman of the United States Commission on Civil Rights, and President of California State University, Long Beach. I wish to welcome you to this hearing conducted by the Commission and introduce you to the other members of the Commission.

On my immediate left is Mrs. Frankie M. Freeman, an attorney from St. Louis, Missouri. Second from the right is Dr. Robert S. Rankin, Professor Emeritus of Political Science at Duke University, Durham, North Carolina; and next to him on the far right is Mr. Manuel Ruiz, an attorney from Los Angeles, California.

Dr. Maurice B. Mitchell, the Chancellor of the University of Denver, another member of the Commission, unfortunately could not be with us.

I also wish to introduce to you the members of the Commission staff who will participate in this hearing.

They are, on my immediate right, Mr. John A. Buggs, the Staff Director of the Commission; and next to Mrs. Freeman on my left, Mr. Lawrence B. Glick, the Deputy General Counsel of the Commission; and next to him, Mr. Paul Alexander, Assistant General Counsel of the Commission.

In addition, Mr. Joseph C. Muskrat, the Director of our Mountain States Regional Office, is also with us.

As previously you have noted, Dr. Samuel Billison will serve as the official interpreter for these proceedings, translating much of the proceedings from English into Navajo.

One year ago this Commission came to the Southwest to focus attention on a too long neglected and too often exploited minority, the American Indian. In hearings in Albuquerque, New Mexico, and in Phoenix, Arizona, we heard testimony which documented a continuing history of wide scale injustice, pervasive discrimination, and patent paternalism involving in many instances both Federal and local governments as well as private citizens.

The investigation which culminated in those hearings brought to the fore an Indian unemployment rate 8 to 13 times greater than the overall rate for the two States, an average educational attainment well below that of the general population, a comparatively high infant mortality rate, and a short life expectancy.

These statistics, showing no improvement over the span of 1 year, will become part of the record again during this hearing. Unlike our sessions in Phoenix and Albuquerque, however, the Commission is now focusing on a single tribe, the largest in the United States, the Navajo Nation. For that reason we are holding this hearing today here in Window Rock, the Navajo capital.

If the evidence shows that Federal policies have deprived the Navajo of their civil rights, then a policy which provides for a large measure of self-determination for the Navajo people would seem to be the first step toward restoring those rights. Too often the discussion has focused on the simple extremes of paternalism versus termination, rather than on self-determination for tribes and individuals and how that self-determination might most effectively be achieved.

On this premise this Commission will explore those areas of economic and social development wherein the Navajo can break away from paternalism and stand as once envisioned, a nation within a nation comprised of free and equal citizens of these United States.

Among the subjects on which we will hear testimony will be opportunities for economic development, employment, health care, and control of educational institutions.

The function of this Commission is to investigate deprivations of equal protection of the laws and to submit its findings to the Congress and the President along with the recommendations for corrective actions. To enable the Commission to fulfill these duties the Congress has empowered it to hold hearings and issue subpenas for the attendance of witnesses and for the production of documents.

This hearing is being held under the authority of the Civil Rights Act of 1957 as amended. As required by law, notice of the hearing was published in the *Federal Register* on September 21, 1973. A copy of this notice will be introduced into the record at this point as Exhibit No. 1.

[The document referred to was marked Exhibit No. 1 for identification and received in evidence.]

ACTING CHAIRMAN HORN. The Commission on Civil Rights is an independent, bipartisan agency of the United States Government, established by Congress in 1957. Its duties are the following:

1. To investigate sworn allegations that citizens are being deprived of their right to vote by reason of their race, color, religion, sex, or national origin.
2. To study and collect information regarding legal developments which constitute denial of equal protection of the laws under the Constitution in such fields as voting, education, housing, employment, and use of public facilities, transportation, or in the administration of justice.
3. To appraise Federal laws and policies with respect to equal protection of the laws.
4. To serve as a national clearinghouse for information with respect to denial of equal protection of the laws because of race, color, sex, religion, or national origin; and finally,
5. To investigate sworn allegations of vote fraud in Federal elections.

The session we begin today will be a public session. The majority of the witnesses we will hear have been subpenaed by the Commission, and the schedule, as you will note from the agenda, has been planned in advance. There will be, however, on Wednesday evening, a session at which persons who have not been subpenaed but feel they have relevant testimony may appear and speak.

I can best explain the functions and limitations of this Commission by quoting from a decision of the United States Supreme Court early in the Commission's history. This is the quotation:

> This Commission does not adjudicate. It does not hold trials or determine anyone's civil or criminal liability. It does not issue orders. It does not make determinations depriving anyone of life, liberty or property. In short, the Commission does not and cannot take any affirmative action which will affect an individual's legal rights. The only purpose of its existence is to find facts which may be subsequently used as the basis for legal or executive action.

And it is that quotation from the Supreme Court that I think appropriately guides our legislative mandate.

In carrying out this legislative mandate the Commission has made detailed studies in the field of administration of justice, education, employment, health services, housing, public accommodations, and voting, among others. To augment its studies in these fields it has held hearings in representative communities throughout the Nation.

I would like to emphasize that a Commission hearing is not an attempt to embarrass any one State, city, group of people, or individuals, but rather an attempt to explore conscientiously and seriously problems and relationships which are representative of broader civil rights problems and practices.

Throughout the Commission's 16-year history it has always sought to be scrupulously honest and fair in its presentations even though the subject matter may be intrinsically emotional. The same objectivity will prevail at this hearing. Federal law protects all witnesses subpenaed to appear before the Commission.

At this point I should like to explain that Commission procedures require the presence of Federal marshals at its hearings; although the Commission and the marshals know that the majority of the citizens would not wish to impede the orderly process of this hearing, the marshals will help to insure an atmosphere of dignity and decorum in which our proceedings can be held.

We will hear from representatives of the Federal, state, and tribal government, members of the private business sector, and individual citizens. We shall give careful consideration to the question of Indian control of Indian institutions and of programs serving Indian communities.

This morning's public session will recess for lunch between 12:00 noon and 1:30 p.m. Today's session will recess at 5:45 p.m. this evening.

The Tuesday session will begin at 9:15 a.m. with a lunch recess from 1:00 to 2:30 p.m. and then continuing until 7:00 p.m.

The Wednesday session will begin at 10:00 a.m. with a lunch recess from 12:15 to 1:30 p.m.; the time between 6:00 p.m. and 8:00 p.m., as I have noted previously, has been set aside for unscheduled testimony. Should any individuals wish to appear at that time they simply would come to that session and we would take them in the order.

The hearing will conclude at 8:15 p.m. Wednesday evening.

And now I shall ask Commissioner Freeman to read the rules of the hearing.

Commissioner Freeman?

COMMISSIONER FREEMAN. Thank you, Dr. Horn.

At the outset I should emphasize that the observations I am about to make on the Commission's rules constitute nothing more than brief summaries of the significant provisions. The rules themselves should be consulted for a fuller understanding.

Staff members will be available to answer questions which arise during the course of the hearing.

In outlining the procedures which will govern the hearing, I think it is important to explain briefly the differences between the public session and any executive session which may be necessary. Section 102(e) of our statute provides, and I quote: "If the Commission determines that evidence or testimony at any hearing may tend to defame, degrade or incriminate any person, it shall receive such evidence or testimony in executive session. The Commission shall afford any person defamed, degraded or incriminated by such evidence or testimony an opportunity to appear and be heard in executive session with a reasonable number of additional witnesses requested by him before deciding to use such evidence or testimony."

When we use the term "executive session" we mean a session in which only the Commissioners are present, in contrast to a session such as this one in which the public is invited and present.

In providing for an executive or closed session, Congress clearly intended to give the fullest protection to individuals by affording them an opportunity to show why any testimony which might be damaging to them should not be presented in public: Congress wished to minimize damage to reputations as much as possible. Congress wished to provide persons an opportunity to rebut unfounded charges before they were well-publicized. Therefore, the Commission, when appropriate, convenes an executive session prior to the receipt of anticipated defamatory testimony.

Following the presentation of the testimony in executive session, and any statement in opposition to it, the Commissioners review the significance of the testimony and the merit of the opposition to it. In the event they find the testimony to be of insufficient credibility, or the opposition to it to be of sufficient merit, they may refuse to hear certain witnesses even though those witnesses have been subpenaed to testify in public session.

An executive session of this type, as I have just described, is the only portion of the hearing which is not open to the public. The public hearing which begins now is somewhat different. The public and the press are invited and urged to attend all of the open sessions.

All persons who are scheduled to appear who live or work in Arizona or within 50 miles of the hearing site have been subpenaed by the Commission. All testimony at the public sessions will be under oath and will be transcribed verbatim by the official reporter.

Everyone who testifies or submits data or evidence is entitled to obtain a copy of the transcript on payment of costs. In addition, within 60 days after the close of the hearing a person may ask to correct errors in the transcript of the hearing of his or her testimony. Such requests will be granted only to make the transcript conform to testimony as presented at the hearing.

All witnesses are entitled to be accompanied and advised by counsel. Counsel may subject his client to reasonable examination. He or she also may make objections on the record and argue briefly the basis for such objections.

If the Commission determines that any witness' testimony tends to defame, degrade, or incriminate any person, that person or his or her counsel may submit written questions which in the discretion of the Commission may be put to the witness.

Persons subpenaed to the public session may request that witnesses be subpenaed on their behalf. All requests for subpenas must be in writing and must be supported by a showing of the general relevance and materiality of the evidence sought. In addition, all witnesses have the right to submit statements prepared by themselves or others for inclusion in the record, provided they are submitted within the time required by the rules.

Any person who has not been subpenaed may be permitted in the discretion of the Commission to submit a written statement at this public hearing. Such statement will be reviewed by the members of the Commission and made a part of the record.

Witnesses at Commission hearings are protected by the provision of Title 18, U. S. Code, Section 1505, which makes it a crime to threaten, intimidate, or injure witnesses on account of their attendance at Government proceedings. The Commission should be immediately informed of any allegations relating to possible intimidation of witnesses. Let me emphasize that we consider this a very serious matter, and we will do all in our power to protect witnesses who appear at the hearing.

Copies of the rules which govern this hearing may be secured during any recess from a member of the Commission staff. Persons who have been subpenaed have already been given their copies.

Finally, I should point out that these rules were drafted with the intent of insuring that Commission hearings be conducted in a fair and impartial manner. In many cases the Commission has gone significantly beyond congressional requirements in providing safeguards for witnesses and other persons. We have done that in the belief that useful facts can be developed best in an atmosphere of calm and objectivity. We hope that such an atmosphere will prevail at this hearing.

Thank you.

ACTING CHAIRMAN HORN. Thank you very much, Mrs. Freeman.

Now, Dr. Samuel Billison, who is the official interpreter and translator for these hearings, will translate the two opening statements into Navajo. Dr. Billison.

DR. BILLISON. Commissioner, I have a question. Maybe you could ask the audience and see if there's anyone here that does not understand or speak English. I don't think we have any traditional Navajos here yet.

ACTING CHAIRMAN HORN. Could we ask the audience, is there anyone here—should you ask in Navajo? They are not going to understand my English.

[Dr. Billison asked the question in Navajo.]

[No response.]

DR. BILLISON. I think, in the interest of time, that we have no one here that does not understand or speak English.

ACTING CHAIRMAN HORN. Very fine.

Should some come this afternoon, you might wish to meet with them in part of the audience and just give them a summary of what our opening statement was, and perhaps the rules of the Commission, because the Commission is very anxious that we communicate with individuals in their native language if they do not understand English.

Let me ask Mr. O'Neil—I believe I probably did not give you the oath, did I? We passed over the engineer.

[Mr. Don O'Neil was sworn.]

ACTING CHAIRMAN HORN. Very good. Thank you, Mr. O'Neil.

Will Mr. Smith come to the witness stand, please. Mr. J. Ford Smith?

We are delighted to see you again, Mr. Smith.

[Mr. J. Ford Smith was sworn and testified as follows.]

WELCOMING STATEMENT OF MR. J. FORD SMITH ON BEHALF OF THE HON. JACK WILLIAMS, GOVERNOR OF ARIZONA

ACTING CHAIRMAN HORN. We are delighted to have you here and I believe you are going to deliver a welcoming statement on behalf of Governor Williams of Arizona.

Mr. Smith, for the record, is the Chairman of the Arizona State Civil Rights Commission.

MR. SMITH. Thank you.

Chairman Horn, members of the U. S. Commission on Civil Rights, and staff, and to Mr. Peter MacDonald, chairman of the great Navajo nation and his tribal cabinet: It is with great pride and pleasure I bring you greetings and best wishes from the Honorable Jack Williams, Governor of the State of Arizona.

Governor Williams deeply regrets his inability to attend this hearing, but prior commitments will not permit him to do so. As you know, Governor Williams has reconvened the State legislature for the sole purpose of finding a solution to the State's educational problems for all Arizona citizens.

Shortly after the meeting held early this year, at which time the Commissioners of the United States Commission on Civil Rights met with the Governor in his office to present him with the findings of a hearing held at the Phoenix Indian School in

November of 1972, Governor Williams commissioned the Arizona State Personnel Commission, with the assistance of the Arizona State Civil Rights Commission, with the responsibility to formulate an affirmative action program to be used by all State agencies and departments.

In a recent letter in response to this action by the Governor, Mr. Harold Bennett reported to Mr. Williams that at least 90 percent of all State agencies had participated in formulating affirmative action agreements. Further, he noted that the increase in minority work force was definitely on the rise. For example, many years ago the department of public safety did not have numbered amongst its highway patrolmen any native American Indians, or Native Americans.

Now, it is my understanding that this figure is in the neighborhood of 18 or 20 patrolmen. The Arizona Highway Department on Friday, October 12, 1973, held an employment seminar that was strictly oriented toward the employment of Indians. Some 50 participants from all tribes were in attendance.

The Governor is aware that employment is not the only problem that faces the Native American today. He is aware of this and is attempting to resolve these problems through effective leadership and administration.

The Governor instructed me to request you, the members of the United States Commission on Civil Rights, at your earliest convenience, the Commission's findings and hearings you will be conducting here at the headquarters of the great Navajo Nation.

Again in closing, Governor Williams sends his greetings and best wishes and sincerely hopes that this hearing will be enlightening and successful and, if in any way the State of Arizona may assist you, please feel free to contact the Governor or members of his staff.

Thank you.

ACTING CHAIRMAN HORN. Thank you very much, Mr. Smith.

May I suggest that our next witness, since Chairman MacDonald will not be here until 10:30, be Juana Lyon, who is representing the Arizona State Advisory Committee to the Commission.

For the benefit of the audience, under the law the Commission has an advisory committee in each State and the District of Columbia made up of a cross section of distinguished citizens who are representative of the interest of the community. And in Arizona we've had a very active group, and Juana Lyon, who aided us very much in the Phoenix hearings that were conducted by Mrs. Freeman last year, is here today to represent the members of that committee.

I don't think we need to swear you, since you won't be testifying on the facts as such before the hearing, so, please be seated and begin your statement.

WELCOMING STATEMENT OF MRS. JUANA LYON, MEMBER, ARIZONA STATE ADVISORY COMMITTEE TO THE U.S. COMMISSION ON CIVIL RIGHTS

MRS. LYON. Thank you.

On behalf of the Arizona State Advisory Committee to the United States Commission on Civil Rights, it is my pleasure to welcome the Commission to Arizona.

Since this is the third Commission hearing in a series designed to examine the civil rights problems of American Indians throughout the country, the Commission is already familiar with some of the problems facing Native Americans. Tribes have suffered economic exploitation at the hands of giant corporations, contracting away their coal, oil, gas, and water on a far less than equitable basis. The Indian himself is exploited by traders and border town merchants. He is told that because he chooses to live differently from whites he is stupid, his children are incapable of learning, and he and his family are somehow inferior.

He and his tribe live under the most opressive alien system of administration imaginable, a system which saps the strength and spirit of the people. A description of the economic and social conditions of American Indians would more closely resemble the description of a refugee people than a group of United States citizens.

To allow these deprivations to continue is to commit a crime against mankind.

In the three days of hearings to follow you will hear testimony covering the two largest complex and pressing problems facing the Navajo: education and economic development. We will see these two problem areas not from our own viewpoint but from the viewpoint of the Navajo.

Education is the means by which we integrate our children into society, teaching them what we have judged to be worthwhile values and practical skills, from digging ditches to practicing law. This requires control of the schools, a control which the Navajo have achieved to a limited extent.

Their successes should be documented for other tribes to follow. Their failures must be examined so that they may be corrected. If this requires that laws be changed, we must recommend those changes. If more money is needed, we must recommend that grants be made.

Economic development is simply a name for the means by which a society supports itself. It does not necessarily mean that a society must industrialize or require of its citizens an 8-hour work day and make them conform to the pattern of typical American life. Economic development does require, however, that the people receive the technical and financial assistance to make crucial decisions concerning their future and that they obtain the resources to carry those decisions forth.

With economic development, as in the case of education, the Navajos have had some successes and some failures; but, as in the case of education, other tribes can learn much from this tribe's achievements and mistakes.

Foreign affairs has taught Americans a painful lesson they should apply in dealing with Indian citizens of their own country. White people cannot impose their judgments and values on another culture without great cost to that people and to themselves. They cannot afford to meddle in affairs of the Navajo. They can only create options and assist when requested.

It is from this position that the Commission enters these hearings and it is from this position that the Arizona State Advisory Committee to the Commission stands ready to assist where needed.

In November 1972 the Commission held hearings in Phoenix, Arizona, and Albuquerque, New Mexico, on the civil rights problems of Indian people in the Southwest. At these hearings Indians and non-Indians, rural and urban, from the public and private sectors, testified concerning employment, education, health services, the administration of justice, and water rights.

The Commission released the Southwest Indian Hearing Report in May 1973. It is a description of the present day conditions of American Indians in the Southwest based on the testimony of witnesses at the hearings and related field investigations undertaken by Commission staff.

The Arizona State Advisory Committee is currently involved in followup activities designed to implement the recommendations contained in the Commission's Southwest Indian Report. These activities will determine the impact on Arizona Indians of employment opportunities in the Federal, State, local, and private sector, educational benefits, and power to influence educational policies, health services, the administration of justice, and Bureau of Indian Affairs' policies and practices in these areas. We are obtaining further documentation of the allegations presented to the Commission at its earlier hearings. We are working in close cooperation with the Commission's Washington office and will issue a brief followup report based upon the most recent data and field investigations.

The coming of the white man was not good for the Indians. Indian people have lost their lands, their system of government, and their way of life. Their men, women, and children have been enslaved and murdered—all in the name of progress and expansion. We cannot excuse these injustices by saying they took place in the past. Things have improved only slightly and wrongs have not been rectified.

Navajo religion teaches that the Navajo are entering what is called the Fifth World, a world of happiness and peace.

Hopefully, we can assist in that transformation. I certainly know that we will try.

ACTING CHAIRMAN HORN. Thank you very much, Mrs. Lyon. We appreciate your traveling here and the spirit in which you make your statement. Thank you for joining with us.

Ladies and gentlemen, we will now have a slight recess until Chairman MacDonald joins us, at which point we will reconvene the hearing.

[A brief recess was taken.]

ACTING CHAIRMAN HORN. Ladies and gentlemen, Chairman MacDonald has arrived so we will resume our morning session.

If Chairman MacDonald will come forward we will swear him as a witness and he will make his comments, and we will then have some questions and answers before we go to the staff report prior to the break for lunch.

[Mr. Peter MacDonald was sworn and testified as follows.]

TESTIMONY OF MR. PETER MACDONALD, CHAIRMAN, NAVAJO TRIBAL COUNCIL

ACTING CHAIRMAN HORN. Thank you very much.

We are delighted to have you here. Let me welcome you on behalf of the Commission. Your reputation obviously has preceded you for years in terms of the Commission. You are recognized as one of the most distinguished leaders in this part of the United States and one of the most distinguished Indian leaders, so we look forward to your comments and I hope that we can have a useful exchange of questions following your impromptu remarks.

MR. MACDONALD. Thank you.

First, let me thank you, Commissioner Horn, Mr. Chairman, members of the Commission on Civil Rights. I am very happy and very honored to have the members of the Commission decide to have a hearing here on the Navajo Indian Reservation. I believe it's going to mean a lot to all of us, the American Indians, that you have focused a special hearing on the American Indian civil rights, not only to be held on the Navajo but to be held on the largest Indian tribe in the country, on the land of the largest Indian tribe in the country. I am very thankful for that.

I am sure that the American Indian people across the country look forward to this hearing as a means by which we can gain further the goals and the aspirations that we all have in acquiring self-sufficiency, and what we talk about in terms of self-determination. So, we are very happy that you are here.

I know that we look to this hearing with a great deal of respect and with a great deal of expectation in terms of results more than any other hearings we have held on behalf of the Indians throughout the country.

So, welcome to the Navajo Nation. I hope that your stay here for the next few days will be beneficial both to you and to the American Indians.

I have a prepared statement which is still being prepared and will not be ready until tomorrow, or perhaps Wednesday, but I will say briefly a few things that I have on my mind and then will leave to you to ask me some questions and I would like to respond to them off the cuff.

Let me say that the civil rights for the American Indians need to be looked at from the standpoint of the American Indian himself. Too often, when we speak about rights, we look at the rights as we see it from our point of view. So I'm hopeful that the civil rights for Indians can be looked at from the point of view of the American Indian—what it means to him, why it is that he seeks rights, equal rights, and in terms of his development, development of the reservation, and also in terms of acquiring those goals and aspirations that he has set forth for his children.

What I mean by this is that too often civil rights and the rights to do this or that conflict with those things which the American Indians have had in their culture or in their tradition, and, oftentimes, in order for the American Indian to achieve his rights it may be necessary to broaden the interpretation of the basic civil rights laws in order for him to achieve his proper place in this society in which we live.

So I believe that first we need to look at the civil rights as how the American Indian looks at it himself. Secondly, there is also a reason for the American Indian wanting to achieve his rights. It's not just to achieve an individual equality, personal equality, but more basically, to achieve equality in terms of a community, a tribe, or as a nation.

You know, the American Indians have governments, they have land, they have resources, and today, most all Indian tribes want to develop these reservations, their resources, and they would like to enjoy the fruits of their labor just like anyone else. But, in order to achieve these, in order to accomplish these developments, then the recognition must be given to the American Indian's right to develop himself those things which he has and those things which he must have in order to bring about full development of his resources so that he can provide for his people now and in the future.

I believe the basic and primary goals—and in this area we talk about control of schools, we talk about control of our own economic development programs, we are talking about control over our own destiny and planning and development of our resources. And in these areas you will find that because of past laws and procedures, in many cases bordering on violation of civil rights and in other areas an outright violation of civil rights, we have not been able to achieve the necessary progress that American Indians would like to see.

With this, I would like to open to you some of the questions that you have and we have here some of our people who have been subpenaed to give further details into some of the things that I have said here, and I am sure that they will come before you today and tomorrow and give further detail on some of the things I have stated here. And additionally, I have said earlier that I will have my statement prepared for submission to the Commission at a later time.

Thank you very much.

ACTING CHAIRMAN HORN. Thank you very much, Chairman MacDonald.

I wonder at this point—I understand there are some members of the audience who speak only Navajo, and I wonder if our official interpreter, Dr. Billison, would mind translating some of the Chairman's remarks prior to beginning questioning by the Commission.

MR. MACDONALD. Dr. Billison and I agreed that I should make my own interpretation in Navajo, since he has a different dialect than I have.

ACTING CHAIRMAN HORN. Yours is the Four Corners' dialect?

MR. MACDONALD. Right. His is the Kinlichee dialect.

[Mr. MacDonald translated.]

ACTING CHAIRMAN HORN. Thank you, Mr. Chairman.

We are going to begin the questioning with the senior member of the Commission, Dr. Robert Rankin, who is a Professor Emeritus of Political Science at Duke University.

Dr. Rankin?

COMMISSIONER RANKIN. During the recess, Chairman MacDonald, we discussed our joint interest in education. You know, I started teaching in 1920, which seems like the middle ages to most of this audience here, but it shows my interest in education.

Now, back in June, you gave several reasons urging the establishment of the tribe education agency; isn't that correct?

MR. MACDONALD. That's right, sir.

COMMISSIONER RANKIN. I wonder if you would be willing to give us your opinion. Which is the greatest problem now that exists in the field of education? You said you needed Navajo teachers. Is it that need? Is it curriculum? Is it school building, is it the multiplicity of school systems?

Could you rate these different problems with respect to their importance and tell us about them and how you would—any way we have of solving this problem, or these problems?

MR. MACDONALD. I would rate them as the mulitplicity of the school systems that we have here, with their particular laws, policies, and regulations, affecting all the other things which you have mentioned. It affects the employment of Indian teachers; it affects the construction of needed school buildings. It affects the establishment of a uniform curriculum that is necessary for the Indian culture, bilingual education and other education that we see as a basic necessity in order to have an education that is relevant to the needs of the Navajo people.

So, if I were to put that down in perspective, I would say the biggest problem is what we have in terms of multiplicity of school systems affecting the Navajo people. For instance, we have a school system on the reservation that is adopted by the State of Arizona and by the State of Utah, by the State of New Mexico, and on top of that we have a school system established by the Bureau of Indian Affairs. So all of this affecting the Navajo education, and for this reason 2 years ago the Navajo Tribe established a division of Navajo education and its goals and its objective is to probe into this situation that we have and come forth with a uniform system, a Navajo system, and try to bring the school system into a uniform structure under the control and under the direction of the Navajo people themselves.

And I am sure that when Dillon Platero comes as a witness before this group—he is director of our division of education—he will give you more detail as to what we are doing at the present time in those areas.

COMMISSIONER RANKIN. Is there anything we can do to help solve this problem of the multiplicity of school systems?

MR. MACDONALD. Definitely. As we move along into these areas we know that we will run across many stumbling blocks, or many laws or regulations, and in these areas we may have to approach the Commission many times in order to bring about a kind of resolution that we will need from the standpoint of civil rights.

COMMISSIONER RANKIN. Now, in your desire for Navajo teachers, I gathered that you didn't want to let down in the quality of teaching; isn't that right? You want them to be good teachers first; wasn't that your statement? And then when they qualify, use them rather than discriminate against Navajo teachers; am I correct in that position?

MR. MACDONALD. This is true. We have many able and qualified outstanding Navajo teachers; but, too often because of the situation that we find ourselves in, it's very difficult for them either to remain or even to get on with the school systems that we have; and, even if they do get on, many times their input is not listened to and the involvement that is necessary on the part of the Native [American] school teachers in the whole educational structure that we have on the reservation does not lend itself to really bringing about the kind of change that we have found to be very effective with some of the schools that we have total control of, such as Rough Rock Demonstration School or the Navajo Community College, and other schools that we have taken on as a specific project for these areas.

COMMISSIONER RANKIN. One last question.

You also mentioned that too few Navajos, I believe, go to universities and colleges for higher education. Now, how—what can we do about that problem? Is there any way we can send them away as you did, go to Norman, Oklahoma, to the University of Oklahoma, or should we bring community colleges to the reservation?

What's the best possible solution or what's your idea on this?

MR. MACDONALD. Well, I believe that our basic goal here is to bring education to the people here on the reservation. In this respect we are doing everything we can to expand the Navajo Community College and perhaps even other types of schools or education that will bring the educational facilities and the programs to the people here.

Now, it's fine, we do not discourage anyone from going out to other universities. In fact, I believe that is also needed. We need to have people to go out and attend universities of their choice. In fact, some of the more prestigious universities, in order to test, in order to say to ourselves, yes, we can do it, one of our people have graduated with honors from such and such university. So, all of these things are necessary in order to instill pride and also to maintain that confidence that we have in ourselves.

COMMISSIONER RANKIN. Thank you for your opinion on these important questions.

ACTING CHAIRMAN HORN. I'd next like to call on Mrs. Freeman.

Mrs. Freeman, as many of you know, is a distinguished St. Louis attorney, has been a member of the Commission since the mid early sixties.

Mrs. Freeman?

COMMISSIONER FREEMAN. Chairman MacDonald, I would like to pursue the statement which you made, civil rights for American Indians need to be looked at from the standpoint of the American Indian himself, and I want to ask a question along the lines of economic development.

As you know, one of the areas that we will be considering during these next few days is economic development and it would be helpful to this Commission to receive your thinking and your statements about economic development and especially to the extent to which we may not be looking at it from the standpoint of the Navajo and indicate the areas in which we need to be looking at it in economic development on this reservation, the Navajo Indian Reservation.

MR. MACDONALD. Well, first of all, the economic development program has many interpretations. As some people regard economic program as bringing in industries and also bringing about those needed commercial facilities so that people who live in an area will enjoy the benefits of those facilities. But, basically, we look at the economic development as an effort on the part of everyone to bring about the kind of change, within the context of our own culture and our tradition as much as possible.

For instance, the development of our natural resources; we talk about the exploitation of our mineral resources. There is a question as to how much of it we can do in order to bring about the development that is necessary to bring about jobs for those who are unemployed today, in order to properly utilize and conserve the resources that we have.

All of these questions have to be decided on the basis of the tradition that we have had here on the reservation, not on the basis of profit or the economics as you would see from the outside, and on the other hand we also talk about the development that is going to make these accomplishments necessary. For instance, we need better schools, we need better roads.

These, sometimes, are not talked about when you talk about economic development from the outside because it is taken for granted that the roads, the water, and the other facilities are already in place. That is somebody else's worry. So when you begin to just concentrate on development, per se, then you leave out many of the things that is here or not here because of the nature of the economy that we have. Consequently, many of the things just cannot move just because development has not been checked into from the standpoint of the way the Navajo lives today and the kind of situation that he finds himself in which sometimes, often is prohibiting for him to even start a shopping center somewhere, which he knows that he needs, or even to start a housing program, very much needed for a decent and adequate housing.

But, nevertheless, all these other things are necessary in order to bring about the kind of development that we need. So what I am saying here, then, is that, if we are all going to help the Navajo people, American Indian people, to develop his land, to bring about the economic development that we would like to see him do, then we must look at it from his point of view. His point of view is that he needs better schools, he needs more and better roads, he needs power, more and more power to be made available at the locations which will facilitate development in those areas, more and better water transportation to areas that will require water now and in the next 50 or 100 years.

All of these require, then, a basic planning and understanding before much of the development that we talk about is going to take place and to cut down the high unemployment rate that everyone talks about, to cut down the high incidence of infant mortality rate, and to bring an end to the sad state of affairs in health so far as Indians are concerned—to cut down all these things and allow these things that I have mentioned here must be taken into consideration for economic development to take place. And on top of that, the understanding that the Indians, the Navajo himself, must make some of these decisions and these decisions must be honored and must be respected.

In many cases because we find ourselves working with the Government, the Bureau of Indian Affairs or Public Health Services, too often we are given the word to do our thing: "Go ahead, you plan, you do what you want." But, when you do these things, then it ends up in the hands of the bureaucratic machinery, and it turns out that many of the things that we have suggested or forwarded for development and for improvement have sat in the hands of the bureaucrats for 2 to 3 years, and oftentimes this becomes a frustrating and back-breaking situation so far as we are concerned.

So, in these areas, I think the need for us to be given the kind of a free hand and the assistance that we need rather than the hindrance or the constant checking and double-checking and delaying and delaying and sometimes outright rejection, we can go a long ways toward some of the development that we have in mind.

COMMISSIONER FREEMAN. I want to pursue your statements concerning the need for better roads and the need for power.

Who would you go to? Is this a governmental entity that would need to assist the Navajos in providing the better roads or is this the private industry?

MR. MACDONALD. Well, the first person we look to is the Government because we have established that relationship with the Government by treaty some years back. So we look to them as the first agency to respond to the basic needs of the Navajo and of the American Indians. So if we lack roads, power, and water transportation on-reservation, then we look to the Government to provide those first necessary facilities in order for us to begin to look to other sources, including our own, to build the kind of economy and economic development that we would like to see.

COMMISSIONER FREEMAN. You made application to the Government for improvement in the roads and the answer was what?

MR. MACDONALD. Well, the answer is always that there is not enough money, that the OMB [Office of Management and Budget] is holding down on the monies, and it's the same—the basic answer has always been not enough money, and just try to maintain the roads that we have and maybe add 3 or 4 miles each year as a new road.

COMMISSIONER FREEMAN. How long has your application or series of applications been pending for better roads?

MR. MACDONALD. Well, I have been in office 3 years, and I know we have been doing this every year and I know that my predecessors have been doing it for some time. So I imagine ever since 1930's, when we began to assert ourselves more and more, we have had applications in there for better roads and better schools, and we just haven't had the kind of response that we would like.

COMMISSIONER FREEMAN. Would you identify for the record and for this Commission the specific agencies to which applications have been filed and for which no money, or little money has been made available?

MR. MACDONALD. With the Secretary of Interior, our budgetary process for the Bureau of Indian Affairs goes to the Secretary of Interior, so we have always filed it with him, and then of course we try to get other Members of the Congress to help us in this area. But normally our request for money goes through the Secretary of Interior.

COMMISSIONER FREEMAN. And this same procedure is true with respect to power?

MR. MACDONALD. Yes.

COMMISSIONER FREEMAN. Thank you. I have no more questions, Dr. Horn.

ACTING CHAIRMAN HORN. Just on that last one, this would of course go the Secretary of the Interior, but on power it would be the Bureau of Reclamation, wouldn't it, as opposed to the Bureau of Indian Affairs? Or does all your work go to BIA?

MR. MACDONALD. No, everything with the exception of the hospitals and health related programs goes through the Bureau of Indian Affairs. Now, for health, hospitals, we go through the HEW [Department of Health, Education, and Welfare].

ACTING CHAIRMAN HORN. Okay.

Commissioner Ruiz?

COMMISSIONER RUIZ. Chairman MacDonald, we are aware that in the past speaking in the mother tongue of the Navajo has not only been discouraged but in many instances punished. To what extent is the use of the Navajo language frowned upon and discouraged at this time and, if that be so, by whom?

MR. MACDONALD. I know that in my time, when I was going to school, it was very much frowned upon by the Bureau of Indian Affairs. In fact, during the time I was going to school in Shiprock I remember being punished many times for wanting—maybe singing one Navajo song, or a Navajo word slipping out of my tongue just in an unplanned way, but I was punished for it. But today I see a great change. Now, whether this change is a real change with the idea that it is good that a child should speak his native tongue, in fact should be encouraged to speak and perfect his native tongue, but I know that there is a great change since the time I was going to school and today in allowing each child to speak his language. But I know that there may be instances where it is not encouraged.

It may not be discouraged, but it may not be encouraged as well, or it may not be developed in a fashion that is going to give that child who may want to practice and perfect his Navajo language, give him the opportunity to do so.

COMMISSIONER RUIZ. Is this in isolated cases or is it a pattern or is it something that is systemic? That is to say, what you have just related, that it's not encouraged but may be discouraged? Is this isolation?

MR. MACDONALD. No, I think it's across the reservation that there is still a tendency to brush aside those native teachings or things that pertain to native and substitute for it the normal course of instruction that one learns at the university or at practice schools you have at universities, so—

COMMISSIONER RUIZ. We are wondering by whom? Can you place it more definitely?

MR. MACDONALD. I would say by the Bureau of Indian Affairs and the other three school systems that we have on the reservation, the public schools. I am sure that when Dillon Platero is here he can give you more detail as to exactly where these—some of these are occurring.

COMMISSIONER RUIZ. Now, with respect to the economic, is your nation interested in competing with Anglo industry? For example, we are told that many aspects of Indian culture would cause many Indian people to reject an Anglo type of industrial society. How can you develop economically by respecting those aspects of Indian culture and still have economic development which can compete with Anglo industry?

MR. MACDONALD. In response to that question, I think that question is very misunderstood many times. It may be just a manner in which the question is phrased.

COMMISSIONER RUIZ. I purposely phrased it so as you could clear it up.

MR. MACDONALD. Let me reflect back a little bit.

As I saw economic development on the Navajo Reservation back in the twenties and the thirties there was very little influence from the outside as to what the Navajo should have in terms of an economy that's going to sustain himself, his family, and the Navajo people as a whole.

There was a great movement on the part of the Navajo people to clear the land and clear the field and plant corn and wheat, alfalfa and many other vegetables, fruit, trees, and what have you. And the effort was to expand these, to have a bigger farm and larger farm, larger fields, and also the same was happening in the cattle field. They wanted to expand the cattle and the sheep and there was a great expansion, and there was— Wealth was being produced and jobs were being created because, as more cattle and more sheep was produced by individuals, more and more family is then directed to separate. Maybe one family will handle about 200 heads of sheep and another family another two or three hundred, and in this way there was an expanding program and people were beginning to go from hogans to stone houses, because they could afford to bring in some windows and lumber from other areas. So, there was this expansion going on.

In terms of the Navajo, Navajo's way of development, and where he may end up, no one knew. In fact, he may end up in the same place if he was left alone. If Navajos were left alone and allowed to develop at whatever pace they were going, they may have ended up at the same place where the rest of the industrial world is today. We don't know.

They may have found a new route to achieve the same kind of economic sufficiency as on the outside, but that effort was stifled by the Federal Government when the Government came in back in the thirties and said, "You cannot develop your land that way anymore." Therefore, most of the livestock were cut down to more than half. Those people who had 1,000 head of cattle were reduced, were asked to reduce their cattle down to less than 100. And the sheep likewise. There was great effort then to take the children into school. So there was this disruption that took place.

Now we are back in the stream of trying to develop a economy here on the reservation again. Now what we are saying here is not that we don't want this or that kind of development. All we are saying is that, let us develop our own economic development scheme as we see it, as something that we can be comfortable with.

It may be the same thing that the Anglo people see as industrial development. It may be the same thing that others see, but it may be different. But something that we ourselves are comfortable with and something that is not imposed and something that we ask for ourselves. This is the difference, so we are not rejecting homes with running water, with electricity in it. I think those are desirable, but whether we should have a subdivision just as you see in Phoenix or Albuquerque is something that we want to decide for ourselves.

COMMISSIONER RUIZ. I think your answer has been very clear and very informative. Thank you very much.

ACTING CHAIRMAN HORN. Let me ask you several questions, Mr. Chairman, that follow up on some that have already been asked.

You were asked during the discussion on education—and I think your answer was a very good one—your objection to the multiplicity of school districts and the desire for the Navajos to control their own educational system on the reservation. And I am wondering to what extent have the universities in New Mexico and Arizona—University of Arizona, University of New Mexico, New Mexico State, Arizona State University—been helpful in any way in terms of educating teachers, administrators, counselors to understand the problems of dealing with individuals of the different culture than the usual graduate of the school of education will confront? And to what extent the tribe is working with such universities to sensitize them as to their need to help produce the type of teacher, counselor, administrator, from the Navajo Reservation, elsewhere in terms of other Indian tribes, who can really meet these educational needs?

MR. MACDONALD. The universities, such as universities in Arizona, New Mexico, and Utah, have been of some help now and then in various specific areas.

But on a very broad basis and on a concerted basis, we have not been able to get going on any of those things which you have mentioned, such as the concentrated effort to really get down into teaching, providing the kind of instruction for Native [American] teachers to be trained and to be able to get from them those things which are Navajo and enrich them with those things which could be learned and coupled from the outside and have them come back and provide the kind of catalyst that is necessary to expand the Native American programs. This has not been done very much at all.

In fact, it was just within the last 2 or 3 years after we had established this division of education, and after getting our own particular organization streamlined, that we have been able to—have had two or three meetings with these three State educators. And we are constantly doing this now in order to bring about the sensitivity that you are talking about, for them to be able to understand what our needs are. And we ask them to help us in a specific way.

And I guess, sometimes, it is not the fault of the university. And sometimes it is because they wanted to help, but we have not given them a way for them to help us. That is, only through this establishment of the division of education have we been able to pool the resources of the Navajo Reservation, the schools, the educators that we have who are Navajos, pooling their resources and talents together and then presenting this to the university as what we want and what we would like for them to do for us in order to improve our own education.

ACTING CHAIRMAN HORN. Each member of the Commission has read quite a bit about the evolution of education on the Navajo Reservation and some of the really frightening stories, which have still occurred even in the last year, of children who have gone away to boarding schools and the homesickness and so forth. We read recently of the experiment, which I think is quite commendable because of these long bus rides, of instructional television being used on some of the buses.

And this brings to mind, given the vastness of this reservation, which is equal in size to the State of West Virginia or Massachusetts, New Hampshire, and Vermont combined, to what extent is the tribe attempting or interested, say, in developing educational television and educational radio so that not just the children can be educated and better understand their own heritage and also some of the needs, if you are going to pursue economic development as well as self-sufficiency in other areas, but also that the parents can be educated as they are spread all about this vast area? It seems to me that one of the solutions would be to move information to the whole family rather than taking parts of the family and hauling them great distances to schools because of this vastness.

Do you have any feelings on this?

MR. MACDONALD. Yes. In fact, there are two or three agencies at work now to bring about this public educational television and radio program to the Navajo Reservation so that we can have the kind of communication and educational programs that will make it so that not only the children are being exposed to education, but the families who are out in the remote areas also have an opportunity to receive education and an up-to-date communication.

And the tribe's communication department has been going out and trying to perfect this. I know the Navajo Community College has been working to get some necessary fundings and approvals necessary to bring about educational television for the entire reservation.

So we are aware of it. And as I have stated earlier before, much of this requires money and, also, understanding that we have a special need, we have a special requirement and, as a result, we need a special understanding.

Now, talking about these education programs, you talk about or mention boarding schools. To this day, some of the school administrators have not even decided whether bilingual education is good or bad. In fact, they are still questioning whether we should have bilingual education or not. They are still questioning whether it was a good idea to relinquish boarding schools or not.

But in the minds of many of the parents, in the minds of many of the Navajo educators, many of these answers are definite. And we want to move out on many of these things, but we are not able to because, again, we are saddled with many, many red tapes and laws and policies which have been handed down over the years. And we need to untangle those things as we go along.

And I am hopeful that, as we have these hearings throughout today and tomorrow, that many of these will be brought to light to the commissioners and that you, in your capacity, can help us untangle some of these things.

ACTING CHAIRMAN HORN. One or two last questions on my behalf.

You mention these laws and the difficulties. Certainly, one that comes to mind is the trusteeship status of the Indian reservation where one, in terms of economic development, cannot really sell a portion of the reservation or land to promote the economic development. But you have to have leasing arrangements, et cetera.

I wonder to what extent do you feel that status—because we are on a reservation—is helpful or harmful in terms of the Navajo desires for economic self-sufficiency as to the type of agreements one might make with outside or inside parties on the reservation? Does it affect your economic development to a certain extent, this limitation on land?

MR. MACDONALD. Definitely. In fact, within the 3 years that I have been in the office as chairman of the Navajo Nation, I have found many, many instances where the initiative of the Navajo Tribe has been stifled and stifled.

And the way that this has been done, it has been very cleverly designed. In other words, we are always being asked, "Okay. What does the Navajo want?"

Okay. Our want is very clearly and definitely spelled out by resolution or some plan of operation which the Navajo Tribal Council adopts. We forward this. Before that action is ever taken, before we can be authorized to take that action, the Bureau has to say yes or no to that particular initiative that we have started.

For instance, in the council meeting, every action of the council is subject to the approval of the Bureau of Indian Affairs before it can become law or before we can take action. So in many cases, we have as many as 30 or 40 major pieces of legislation passed by the council, resolutions outstanding, not being acted on for any time up to 2 years.

And this is ridiculous, as far as I'm concerned, when you ask someone, "What do you want to do? You do your thing. Well, we are just at your service. Whatever you want to do, we want to help you achieve it." To me, it is not accomplishing that at all.

I think in many cases, in these areas where Indians make decisions and the tribal council makes a decision, the tribe makes a decision to do certain things, oftentimes rather than the Government resources that are available to him rallying behind him, to help him achieve that goal he set for himself, is often a deliberate—or maybe it is not deliberate; maybe it is the machinery that is there—a cutting-down and delaying, further checking and referring it back to the tribe and saying, "You need to rewrite this sentence here because we don't understand really what it says."

So the tribe rewrites it and sends it back.

Four or five paragraphs down, "Rewrite this sentence again." It goes back down.

"By the way, did you realize that another fiscal year has passed? So why don't you do it all over again."

These kinds of delays are happening all the time, and for a big nation such as the Navajo, it can become very devastating so far as progress is concerned because a nation as big as the Navajo, we need to move. We need to move as fast as we can in order to achieve those goals that we have for ourselves. We cannot just wait and we cannot just continue to pass laws and make laws or pass legislation which are just outstanding, not being acted on.

Acting Chairman Horn. I wonder along that line, Mr. Chairman, if your office could furnish the Commission within the next month or so with resolutions and proposals which it has submitted to the Bureau of Indian Affairs that have not been acted on or where you feel there have been delays that were unreasonable of a year or 2 years.

I think this would make a very interesting exhibit at this point in the record, just to pin down some of these proposals, tribal resolutions which you feel have been lost in the bureaucratic maze or have been the case of buck-passing, as the saying goes, back and forth between the Bureau of Indian Affairs and the Navajo Nation.

[The information described, to be marked Exhibit No. 2 for identification, was received in evidence.]

Acting Chairman Horn. Let me go back, though, to this question of economic development and the land. Do you feel, or has the tribe discussed at any point that some of the reservation—perhaps a law should be passed permitting the Navajo Tribe to, say, sell portions of the reservation for economic development? Or do you feel that you can achieve economic development under the present leasing arrangements that are available to you without severance of the land as such?

Mr. MacDonald. Yes. We are trying to achieve economic development within the framework that we have.

It is already a handicap as it is just to get a lease on a block of land which someone else has a use right on. It is a very difficult exercise. But to request that pieces of the reservation be sold is even probably impossible. So we do not even think about selling the reservation. In fact, we think about acquiring more reservation than we have now. It seems that the capacity to sustain the people and the kind of economy that we have requires that we have more land.

But in order to talk about the development that brings about concentration of work in one area, then, of course, the present arrangement we have is a leasing arrangement. And I guess that is the safest arrangement we have right now without relinquishing the reservation, to lease it and maintain it as we have.

But we know it brings about some difficulty. The difficulty that it brings is it is very difficult to finance an economic development program with that kind of an arrangement. So in this area, we are asking the Government to help us in those areas where we will need to develop and require some large capital investment where we cannot get capital backing because the land is still trust land of the Navajo and no one really wants to come in and give us the kind of financial backing. We ask the Government to step in and give us the necessary financial backing in order to achieve the development that we have.

ACTING CHAIRMAN HORN. Let me ask you one last question along this line.

You mentioned the actions in the thirties where there was great expansion of livestock. Yet, the Government came in and said, "Cut back on your herds," et cetera. As I understand it, one of the reasons they took this position was the fear of overgrazing and the resultant erosion, and the problem that you would have of dwindling livestock herds as a result.

Well, another phenomenon, and you have mentioned this, that has occurred since, really, the 1880's on the Navajo Nation, is the population expansion where you have doubled. Almost every generation has doubled.

Now, some have compared the status and relationships of the Navajo nation to the plight of a developing nation in Africa or Latin America where you had, say, the European powers, as colonial powers, that really did not provide sufficient educational opportunity, took extractive materials—mining, whatever—from the land. And you find, when you try to change a developing nation so they can become self-sufficient, which is what your goal is, that one of the burdens they face is, can the economic development get ahead of the population expansion which is, in turn, putting more pressure on, say, limited resources in terms of land, capital, job opportunities, whatever?

I just wonder what your thoughts are, given the— You mentioned you want to get more land because you have a real need for it, given the arid nature and desert nature of a lot of this land and to be self-sufficient, and yet you have a rapidly increasing population; do you feel that—has the tribal government thought about these problems? And to what extent do you feel you can get economic development to catch up with and get ahead of your population increase?

MR. MACDONALD. Definitely. We believe that the economic development on the Navajo Reservation, at the present time, is hardly developed at all. In fact, it is very underdeveloped and undeveloped.

So we have the strong belief that if the kind of potential that is here on the reservation, with the raw materials and resources that we have, without importing anything, we can bring about self-sufficiency for the present population that we have and catch up, so to speak, with what we have been denied for many years. After we are caught up, then we have every belief that the rate of the population growth can keep up with the economic development expansions that we have in mind.

Somewhere along the way it becomes sort of snowballing, self-supporting, but the hardest part is to bring up economic development and the potential of the development that we have of bringing those up to where it should be right now. And it is there. All of the needs are there. And if all of those developments do take place within the next 10 years, it can definitely provide for about 60 to 70 percent of the jobs that are necessary to put the people to work so that we can cut down the unemployment from where it is now, 65 percent, down to some decent figure of 10 or 15 percent. And from that point on, then development can begin to accelerate with the required education and, also, with the basic development as a base from which much of these developments can just move on.

But the reason is—having a heck of a time trying to take place, and it seems that just the population is getting larger and larger and development is not taking hold—is many of these things that are necessary to bring about a large development over a period of 10 or 15 years have not been put together in the proper sequence in order to bring about massive development all at one time.

ACTING CHAIRMAN HORN. In other words, right now, we know what your working population will be, roughly, 20 years from now because all those children are already born?

MR. MACDONALD. Right.

ACTING CHAIRMAN HORN. And I assume your tribal economic development, to get self-sufficiency, has taken that into account; that X number of individuals will be, say, 18 years of age or above two decades from now and you need a certain amount of jobs in order for them to be self-sufficient.

MR. MACDONALD. Right. In fact, a year ago, we started on long-range programming for the Navajo Nation.

And a year ago we had completed that particular work and went before the council, and the council approved a definite plan by which—assessing where we are today and where we want to be in any given period of time and what is necessary in order to cut down the need for employment and cut down the health problems that we have in various areas, to bring about better development in housing and schools—all of these have been projected in such a way that we, on a conservative basis, feel that within 10 to 15 years, if all of these things are put in place properly, that we can have a development here that is going to be meaningful. But, above that, very stable and not artificial but based upon an economy that is in the hands of the people, not in the hands of the Government, and that we always continue to depend on the Government, say, 90 to 100 percent.

I think we need to develop an economy that will depend on the people themselves, the people generating that economy, and that is more stable and that is more permanent. That has more definiteness to it than depending on someone who gives you money and gives you money to work and gives you money to do this, but rather something that we produce ourselves by our own initiative, by our own talent, and by our own works.

But, in order to get to that stage, we have got to have this catch-up programming which requires very heavy Government expenditures.

ACTING CHAIRMAN HORN. Mr. Buggs, our Staff Director, will ask the next series of questions.

MR. BUGGS. Mr. Chairman, you alluded some time ago to the possibility of conflict in terms of economic development between what one might characterize as the American style, the Anglo style, of dealing with the land, as over against the Navajo style. Is there an inherent conflict that is, to some extent, insurmountable with reference to the extent to which economic development can provide for self-sufficiency within the context of how the Navajo would like to see the land used?

MR. MACDONALD. Well, I don't think so. I think the conflict really is brought about simply because some of the wishes of the Navajos are not brought into the picture of the developments. Although what I am saying here is that, in many cases, it may be the same kind of development that we want, but we want it in our own terms.

For instance, you take the strip mining which has been one of the controversial things here. Well, we, the Navajos, did not have an opportunity to even discuss the pros and cons of strip mining when it was put to us, that we leased the coal to the companies and that they were going to mine it, surface mining or strip mining. The question did not come about. They mine it as they wish.

Now that we are more aware of these things, we believe that any future venture, we will have to seriously talk about, not just give the coal or other mineral resources to a company. But to talk about the manner in which it shall be developed, also to talk about the economic benefits to the Navajos, not simply give it away because it is just lying in the ground, not doing us any good anyway, that kind of concept. But to treasure it as something that the Navajos have, something that is not replaceable once it is exploited. Therefore, we are going to look at it from the point of view of how it is going to benefit us now and in the long run before we just give it away outright as it has been in the past.

MR. BUGGS. Why is it, Mr. Chairman, that your tribe cannot appeal directly to the Federal Highway Commission, for example, in connection with the problems of roads, or the Federal Power Commission in connection with the problem of power? Why do you have to go through BIA? Is that a means of controlling what the tribe can and cannot do?

MR. MACDONALD. It is just the way they write laws into the legislation in Congress. For instance, the Highway Act in the past has always talked about the States and counties. It never talks about Indian tribes. Therefore, when we do make an approach to the Highway Department, Department of Transportation, there is no provision for them to give money to an Indian tribe for an Indian reservation. They always say, "Go to the BIA."

MR. BUGGS. Does BIA go on your behalf to the Federal Highway Administration?

MR. MACDONALD. They do. But they get kicked back to, "Go see your Secretary of Interior," kind of thing. But the thing is that many of the laws—in fact, most of the laws made in Congress—just talk about States and counties and never talk about Indian tribes.

We have been trying within the last few years to get various Congressmen and Senators to write into various bills in Congress, "Indian tribes, including." That way, we can go to the Highway Department, Department of Transportation, or any other facility of the Federal Government.

But in many cases, some of these have been attempted, you know, by various Congressmen to write into these bills that the Indian tribes shall have access to this money or appropriation. And, in Congress, somebody takes it out.

MR. BUGGS. Does the BIA oppose you on this?

MR. MACDONALD. No. I think BIA would rather see it in BIA. So—

MR. BUGGS. That's what I mean. BIA would oppose you?

MR. MACDONALD. They don't outright oppose it, but I know how politics are in Washington. You don't have to come out in the open to say you oppose something. You do it very subtly.

Maybe they do this, but I should think they ought to be happy that there are other sources which the Indians should tap in order to help their effort.

But I think that is one of the problems that American Indians are having with all the money legislations that are happening in Congress. We do not have access to those because it is not one of the laws. They get around it.

Although you get some agencies like EDA [Economic Development Administration, Department of Commerce] or maybe, in some cases, one or two other agencies, they bend the rules in order to make some monies available from those agencies for a specific purpose—that that enabling legislation was adopted by Congress—in order to make money available to Indians.

But more than that it happens, I would say 90 percent of the time, when we go to all the other agencies, like the Department of Agriculture and many other places, they say: "Here's the law. It just says State and county. You are not a State. You are not a county. Therefore, I am sorry. We are going to be violating the law if we ever give you any money, although we sympathize with your situation. It fits into your scheme of planning, but we cannot give you any money."

So I think, in these areas, it ought to be recognized. For instance, just last week, the Navajo Tribe was forced to pay $70,000 in Federal excise tax. Now, here, you know, all of us know, everybody knows, that the Navajo Tribe runs a government. There is a government here, no different from the State government or Federal Government so far as it is exercising the kind of services to its people.

Yet, we bought some automobiles to be used by the police for community use, and we said that, "We are not subject to a Federal excise tax, just as the States and the counties are not subject to Federal excise tax."

This went on for about a year.

We finally got an opinion from the Attorney General's office and then from the court that: "We know you are a government. Everybody knows you are a government. But according to the law of the Internal Revenue, the Federal excise tax only refers to—the exception refers only to the State and county governments. It doesn't talk about Indian tribal governments. Therefore, you have to pay."

So these kinds of things are hurting. It hurts us not only in the pocketbook, but it is a backbreaking situation when you run into these things.

MR. BUGGS. I have no further questions of the chairman.

ACTING CHAIRMAN HORN. Mr. Glick, our Deputy General Counsel.

MR. GLICK. Mr. Chairman, I have just a couple of brief questions.

Referring to the President's special message to Congress on American Indian affairs of July 8, 1970, he made some recommendations for legislation, the theme of which was Indian self-determination.

But, in addition to the recommendations for legislation that were made, there was also—it appeared to establish a policy for the executive branch of the Government which would be to pass along the theory of self-determination as much as possible to the Indian tribes.

Have you seen any change in the relationship between the tribe and the Bureau of Indian Affairs or the Indian Health Service of the Public Health Service since that philosophy was established 3 years ago?

MR. MACDONALD. Yes, I have seen a change of three Commissioners of Indian Affairs since—

[Laughter.]

—and a couple of Secretaries of the Interior.

But, really, nothing basic has changed out in the Indian country simply because it is one thing to say, as the President has stated, you know, "These are some of the things that ought to be worked at. These are some of the things that I want the Secretary and the Commissioner to push on behalf of the

Indians, and I want this to be pushed on by Congress on behalf of the Indians."

It takes more than that to accomplish the kind of change that is needed here, that can be felt here on the reservation. For instance, many of those changes that the President has asked for have deliberately sabotaged the Indian Interior Department and the BIA and, also, some of that in Congress. So not very much has happened.

Even if he did not make that statement, perhaps we would have gone as far as we have in many of the areas.

But some of the changes that did come about is that there is this disruption in BIA now, which—whether it is good or bad—I think can be made to bring about positive results if we can take advantage of the situation that they are in right now, because it seems that no one really knows how to approach the Indian problem from Washington on down.

I do not think we have a problem from the Indian standpoint. I think most Indian tribes across the country know what they want, know exactly where they want certain things. They also know in what time frame they would like to achieve certain things.

And the problem comes, basically, from the top. I think the people at the top really do not know how to accomplish the needs of the American Indian without getting involved in a political conflict with other people. I think that is one of the basic problems you find in Washington, is that every idea advanced by Indians for the good of the Indians, one of the first things that people ask is, "Is this politically feasible?" And if it is not politically feasible, whether it is the best thing that can happen for the American Indians, it will never happen.

So, somehow, we are going to have to narrow or eliminate as much of that question for someone to make in Washington, "Is it politically feasible," because, as you know, nowadays, most anything is politically not feasible up there now, especially with the Watergate situation and everything else. So we get caught in those things, too.

No longer can the Secretary or the Commissioner—the Commissioner probably can take some bold steps and do things that are positive on behalf of the tribe, Indian tribes, but they are going to have to be more cautious because "caution" seems to be the word nowadays up there. Everything that we ever tried to get in terms of money or better legislation or new laws for the benefit of the Indians has all stopped because it is blamed on the Watergate situation. And whether it is true or not true, at least they are using it as an excuse now.

So I guess what I am saying, in answer to your question, is there has been some advances made so far as maybe additional monies for different projects and, also, an opportunity to try out some new things down here. But those are minor compared to some of the big things that we would like to see happen, and it all hinges on how well the Bureau and the Interior Department work with the Indian tribe. At the present time, it is not working at all.

MR. GLICK. Mr. Chairman, you referred to developmental plans that the tribe has worked up and have been approved by the Council. I assume you are referring to the 10-year plan for economic development. Has that ever been presented to the Bureau officially or has it been distributed to Members of Congress to begin considering providing resources that the plan calls for?

MR. MACDONALD. Not officially. Some of the Members of Congress have copies of that and, also, the Bureau has copies of it. The reason we have not really come forward is we know exactly what will happen in Washington. It is when that 10-year plan shows up, the first question is, "Is this politically feasible?"

So with that in mind, we want to make sure that we gather the kind of resources together and present it as a force and try to work it on through once the momentum has started, rather than just handing it to the Commissioner or just handing it to the Secretary of Interior. But, rather, to create a mechanism from the part of the Navajo and then move forward through whatever committees or whatever bodies that we must go through in order to push this and get the kind of response that we would like to see.

MR. GLICK. Thank you. I have no further questions.

ACTING CHAIRMAN HORN. Thank you.

Mr. Alexander, do you have any questions?

MR. ALEXANDER. No. I would like to introduce the 10-year plan into the record.

ACTING CHAIRMAN HORN. Without objection, the Navajo Tribe's 10-year plan will be inserted at this point in the record. Chairman MacDonald's prepared statement, when it arrives, will be inserted before it.

[The documents referred to, to be marked Exhibits No. 3 and No. 4 for identification, were received in evidence.]

ACTING CHAIRMAN HORN. We now will have a short summary by Dr. Billison of the exchange of questions and answers that has occurred for the benefit of those in the audience.

Mr. Billison.

Mr. Chairman, you are excused, if you would like. He was taking notes and we thought we would not put the burden on you to recapture this whole thing. So thank you very much for appearing with us today. We appreciate it.

MR. MACDONALD. Thank you very much, Chairman Horn and members of the Commission. I appreciate this time to make these views known, and I will submit more detailed, written testimony to you at a later date.

Thank you very much.

ACTING CHAIRMAN HORN. Thank you, sir.

[Applause.]

ACTING CHAIRMAN HORN. Dr. Billison.

DR. BILLISON. [Translation into Navajo.]

ACTING CHAIRMAN HORN. Thank you very much, Dr. Billison, for that fine summary of the questions and answers with Chairman MacDonald.

This afternoon's session we will begin with the staff report overview by Carol McCabe, a member of the staff of the Office of General Counsel, United States Commission on Civil Rights. We will then proceed into the first major substantive area of the various topics we will cover, which will deal with economic development.

Following the session on economic development, we will begin about 4:15 on small business development. And then at 5:00 o'clock, there will be a panel on credit availability. And our evening session, we hope, will conclude approximately at 6:00 o'clock.

For some of you who have come in late, again I repeat the invitation that the Commission will have a session open to anyone from 6:00 to 8:00 o'clock on Wednesday evening.

Therefore, until 1:30, we stand in recess.

[The hearing recessed at 12:20 p.m., to be reconvened at 1:30 p.m., this same day.]

MONDAY AFTERNOON SESSION

OCTOBER 22, 1973

ACTING CHAIRMAN HORN. The afternoon session of the United States Commission on Civil Rights will resume.

We will begin with a report prepared by Carol McCabe, of the Office of General Counsel, United States Commission on Civil Rights, which will give an overview of the situation on the Navajo Reservation and various demographic statistics.

Carol, if you will raise your right hand, please.

[Ms. Carol McCabe was sworn and testified as follows.]

TESTIMONY OF MS. CAROL McCABE, STAFF MEMBER, U.S. COMMISSION ON CIVIL RIGHTS

ACTING CHAIRMAN HORN. Please be seated.

MR. GLICK. Identify yourself for the record.

MS. MCCABE. My name is Carol McCabe. I am on the staff of General Counsel in Washington.

MR. GLICK. General Counsel on the U. S. Commission on Civil Rights?

MS. MCCABE. That is correct.

MR. GLICK. Miss McCabe, in your capacity as an employee of the Office of General Counsel of the Commission, did you and other persons working under your supervision prepare a report entitled "Demographic and Socioeconomic Characteristics of the Navajo"?

MS. MCCABE. Yes, we did, sir.

MR. GLICK. Is this the report?

MS. MCCABE. Yes, it is.

MR. GLICK. Mr. Chairman, I request permission to introduce that report into the record.

ACTING CHAIRMAN HORN. This will be introduced as Exhibit 5 at this point.

[The document referred to was marked Exhibit No. 5 for identification and received in evidence.]

MR. GLICK. Miss McCabe, have you prepared a summary of that report?

MS. MCCABE. Yes, I have.

MR. GLICK. Could you present it to us now, please?

MS. MCCABE. Certainly.

More than 128,000 Navajos live on or adjacent to this, the largest Indian reservation in the United States. With a land mass the size of West Virginia, the Navajo Reservation spreads across three State boundaries, Arizona, New Mexico, and Utah, and encompasses about 14 million acres.

This great mass of land, however, most of which is held in trust by the Federal Government, has not made the Navajo a wealthy people. On the contrary, average per capita income is less than $1,000 a year, which is about $3,000 less than the national average. Instead of narrowing, this gap has widened in recent years.

Some other comparisons are equally compelling. While the national unemployment rate for 1972 teetered at 5.6 percent, unemployment among the Navajo was a staggering 35 percent, and a combined rate of unemployment and seasonally or part-time employed soared to about 60 percent.

Educational attainment comparisons are no brighter. Compared with the average American, the Navajo receives little formal education. The median education level of adult reservation Navajos is a mere 5.3 years compared with a national median of 12.1 years. Only 18.8 percent of Navajos 25 years and older have graduated from high school while the national level is 52.3 percent. The problems of formal education take on even greater urgency in light of the fact that more than 75 percent of the Navajo Tribe today is under 25 years of age.

While the foregoing statistics present a bleak picture, it is not a hopeless one. The Navajo 10-year plan illustrates a wealth of development potential. At the same time it itemizes the missing and necessary foundation elements of any development plan, including adequate capitalization.

The availability of investment capital is as vital to economic development in Navajo land as it is in any developing nation. The tribe has some accumulated capital reserves, mostly from leases for the exploitation of energy resources—oil, natural gas, coal, and uranium.

These leases and royalty revenues have made it possible for the tribe to meet a broad range of welfare needs from government expenses to clothes for school children. Consequently, little of this money is available for long term investment in economic development but must be carefully guarded against the time when resource depletion reduces tribal income below the amount necessary to maintain essential services.

While outside development capital is actively sought, recent experience has shown that it does not always bring with it all of the benefits promised. For example, lease agreements with large firms have included clauses providing for the preferential hiring of Navajos, but these agreements have frequently been violated. Another problem is making certain that the tribe is receiving adequate compensation for the land, water, and other resources which might be used or depleted under lease agreements. For this the tribe needs the opportunity to develop its own pools of technical expertise, but more importantly, or more immediately, it needs access to outside sources of competent advice.

Other obstacles to economic development become obvious with no more than a first hand look at the reservation. The ratio of paved roads to square miles in the rural areas of the States surrounding the reservation is three times what the ratio is on the reservation. The so-called all weather roads maintained on the reservation by the Bureau of Indian Affairs are only all weather in the absence of rain or snow.

Other modes of transportation are even more limited. No major rail facility has shipping depots on the reservation, and air transportation is limited to small charter services.

Even more important, however, is the tribe's limited access to water. About 90 percent of the Navajo lands are either desert or semiarid steppe suitable only for limited stock raising and bare subsistence farming. The tribe is entitled to enough of the flow from the big Colorado River to irrigate all land capable of being used for agricultural purposes; but, because of a lack of dams, canals, and irrigation systems, the Navajo have never been able to make use of those water rights. A major irrigation project was approved by Congress in 1962 but has never been adequately funded. The tribe now estimates the need for $150 million in funding through 1982 if the project is to be completed by 1986.

Another basic problem to be overcome in achieving any development scheme is the revamping of an educational system which is failing the people it supposedly serves. The public schools which more than 28,000 Navajo students attend are entitled to receive aid from the Federal Government under a variety of laws intended to give the Indian child an equal opportunity to learn.

Impact aid is one such program. One of its shortcomings is the virtual lack of any restrictions on how the grant money is spent. The Commissioner of Education has no power to demand that the money granted be spent on special programs or curriculum changes to benefit Indian children. The individual school districts have almost complete control over the aid and have shown little interest in Indian preferences for its expenditure although the greater portion of the aid is received because of the Indian students.

The staff report documents other abuses.

A U.S. district court earlier this year found that the Gallup-McKinley school district was misusing funds under two other Federal programs. While the court found that many of the violations were unintentional, they were still viewed as significant enough to warrant court action. It can be hoped that this decision signals a new step forward in judicial supervision of Federal programs designed to benefit Indian schoolchildren. But still needed in any event will be a greater voice for Indian parents and students in Navajo education, both in public schools and those currently operated by the BIA.

In summary, the Navajo today, much like a developing nation of the third world, is turning the corner away from the colonization, exploitation, and neglect of the past toward a new era of self-determination and self-development. The difference is that the Navajos are United States citizens and the focus of other Americans should be on aiding and expediting the achievement of what Navajos themselves determine to be Navajo goals.

ACTING CHAIRMAN HORN. Thank you very much, Miss McCabe. We appreciate the testimony and the research which lies behind that.

We will now begin the afternoon session specializing on economic development.

For the benefit of those that are new in the audience, at the end of today's session Dr. Billison will translate a summary of the exchange that occurs this afternoon after we conclude this hearing for those who speak Navajo. And I wonder, Dr. Billison, if you would like to make that announcement right now that at the conclusion of the session you will be available to translate and the audio system will be working for the benefit of those who speak Navajo.

[Translation into Navajo.]

ACTING CHAIRMAN HORN. Thank you.

Now, we will begin with our first panel, the economic development community panel.

Will Harris Arthur, Keith Smith, and Carl Todacheene please come forward and be sworn as witnesses.

[Mr. Harris Arthur, Mr. Keith Smith, and Mr. Carl Todacheene were sworn and testified as follows.]

TESTIMONY OF MR. HARRIS ARTHUR, INSTRUCTOR, NAVAJO COMMUNITY COLLEGE; MR. KEITH SMITH, PRESIDENT, OLJATO CHAPTER; AND MR. CARL TODACHEENE, MEMBER, NAVAJO TRIBAL COUNCIL

ACTING CHAIRMAN HORN. Thank you, gentlemen. Please be seated.

Mr. Glick?

MR. GLICK. Will each of you gentlemen please identify yourself for the record by saying your name, your address, and your occupation? Mr. Todacheene first, please.

MR. TODACHEENE. I am Carl Todacheene. I am a member of the Navajo Tribal Council. I am the chairman of the resources committee of the Navajo Tribal Council. I am a farmer, rancher, and businessman.

MR. GLICK. And you live in the Shiprock area?

MR. TODACHEENE. I live in Shiprock, New Mexico.

MR. GLICK. Mr. Arthur?

MR. ARTHUR. I am Harris Arthur. I presently am an instructor at Navajo Community College in Shiprock and that is where I am presently residing, in Shiprock.

MR. GLICK. Mr. Smith?

MR. SMITH. My name is Keith Smith. I am from Kayenta, Arizona, and I'm the businessman. And then also I was working with the Estate public schools, and my job is transportation director.

MR. GLICK. Mr. Smith, are you an officer of your chapter house?

MR. SMITH. Yes, I was just recently elected to—the chapter officer, the president.

MR. GLICK. Thank you.

Now, I'd like to begin the questioning with Mr. Arthur.

Mr. Arthur, within the last year we understand there's been a proposal to establish coal gasification plants on the land of the Burnham Chapter, which is located in the eastern part of the reservation, of which you are a member. Could you tell us briefly what these proposed plants are supposed to do and where in the chapter they are located?

MR. ARTHUR. Several years ago the Navajo Tribe leased some lands to El Paso Natural Gas Company and Consolidated Coal Company, and it was revised subsequently. I think 40,000 acres or more was leased to these developers to mine coal. And in 1957, I believe it was, the tribe also started negotiations or finalized the lease and then subsequently revised the lease to a Utah International, Incorporated, some 30,000 acres.

Of these leases the entire El Paso leases [are] within the Burnham Chapter, and approximately half of the Utah leases in the Burnham Chapter; and since then, in view of recent energy developments across the Nation, there's been a big push to develop these coal reserves to help meet some of the needs across the country.

Now, in developing the coal reserves, proposals were submitted that planned to develop them in such a way that they would produce synthetic natural gas through a process known as coal gasification, which I understand has been around for several years. So El Paso has proposed there may be three such plants within the Burnham Chapter and WESTCO, which is proposing four plants who will be buying the coal from Utah International; and combining, there will be seven such plants in the future to mine these coal reserves in a—and I understand, it is my understanding that they plan to consume the entire coal reserves or coal deposits in that area within 25 years.

MR. GLICK. When did the Burnham Chapter first formally learn of the proposals to build the coal gasification plants on the leased land?

MR. ARTHUR. As far as the chapter—I am not an elected official of the chapter, but I was quite concerned about some of the talk about these proposals—so we first heard of these proposals probably 2 years ago, not more than 2 years ago, I think it was. This was in 1971 when people began receiving rumors that there was some sort of plant to burn the coal were being proposed. And until a year ago it was not definite that these plants would be gasification plants. So I would say the chapter did not really become aware of the proposed plants until probably a year ago, within the past year.

MR. GLICK. About a year ago; and what kind of a presentation was made? How did it come formally to the chapter?

MR. ARTHUR. Well, formally, as I said previously to this, there's been rumors, but formally, a formal presentation was made by El Paso Natural Gas Company. Their central field division director in Farmington came to the chapter meeting and made the statement that El Paso was indeed planning these coal gasification plants and probably as many as three. And this was in August of 1972.

MR. GLICK. What was the reaction of most of the people in the chapter? What was your own reaction, I might ask also?

MR. ARTHUR. Well, in general, the reaction in the chapter was rather mild at that meeting. They were a little surprised that they hadn't heard anything formal from their elected representatives on this issue, and they were a little concerned that they had to come from the developers themselves.

My personal reaction was—you might say I did overreact at that point because of some of the statements that were made by these representatives from El Paso Natural Gas, which I consider, and I still consider, truly false statements and misleading statements, and I thought that this type of presentation was not fair to my people. It wasn't fair and just, so I proceeded then to, on my own, to investigate some of these problems and find out just exactly what was happening.

MR. GLICK. What did you think was unfair and false about the proposals or the way they were described?

MR. ARTHUR. Well, specifically there were statements made and promises made that led the people to believe that 900 Navajos would be working there while, in fact, 900 Navajos weren't going to be working there, but in each of these plants I think they estimated 900 employees. But the way it was presented, it was presented in such a tone that 900 Navajos would be employed, which was misleading. And there were statements concerning water. I remember specifically the statement that the water had been obtained from San Juan River and that this water would then be brought down to be used in the plants, and they would also be available for the local Navajos to use on the farms and in their homes, which was entirely false.

The fact was that El Paso did not have the water, they still do not to this day, and it was earmarked for the plant and no outside use. It was not earmarked for noncommercial use, such as in homes or on the farm, and these are just specific examples of some of the things that were made which I strongly objected to and I felt that they needed to be corrected and the truth of the matter be presented to the people.

MR. GLICK. Did the members of the chapter take a vote on whether they wanted these plants to be built in their area or not?

MR. ARTHUR. At that meeting, a year ago in August, we did not take a vote. We just asked broad questions concerning the proposal, but it was not until May 5 that El Paso came again to the chapter.

MR. GLICK. May 5, 1973, right?

MR. ARTHUR. Right.

And it was at that time that they made a formal request for approval from the chapter for their proposed project and up to that time of course we had done some research regarding the leases, their proposal, what it would mean to our people, and we were then prepared to ask some questions and prepared to make a position.

At that time we did make a position. We decided that it was not in the best interest of the Burnham Chapter to approve this type of development at this time. We stated several reasons but we did make a formal rejection at that time. I think the vote was 40 to nothing, or something like that. Forty people voted.

Later on in the summer, in the latter part of July—I don't know the specific date on it—the WESTCO developers came and presented a similar proposal for their plants, and we also rejected that formally at that time. I think we had one—it was 41 opposing the development now and 1 in favor of it, something of that nature.

MR. GLICK. And to this date has there been any going forward with the plans? Has there been any construction or surveying or anything of that nature?

MR. ARTHUR. To this date there has not been any extensive construction activity, although I do understand that El Paso is contemplating on proceeding with a pilot project within 15 months or 18 months.

There have been extensive surveys. I think the tribal chairman or the advisory committee gave permission to El Paso to explore for water in that area. There have been surveyors, and there have been meteorological studies being carried on in that area.

MR. GLICK. Thank you, Mr. Arthur.

Now, I'd like to ask Mr. Smith some questions. And, Dr. Billison, I think Mr. Smith has requested that my questions be translated into Navajo for him, and so can we begin by asking Mr. Smith to describe the level of economic development in industry, and particularly in agriculture, in the area of Kayenta.

[Translation into Navajo.]

MR. SMITH [translated from Navajo]. It wasn't until recently that I was elected to the chapter organization as an officer, but I remember that prior to this, during the period that I served on the tribal council, we did discuss the possibility of a development of water because it was at this time known to us that there was plenty of water because much water has been used in the exploration of natural resources such as uranium, vanadium and et cetera.

Recently, after—the discussions that were made regarding these developments are not clear to me because of being out of office, but I know that the plans have been for three specific purposes, and this was to impound the water for the use of water for livestock and also for farming and recreational. These were all tied in with some type of economic development.

MR. GLICK. I'd also like to ask Mr. Smith whatever happened to those proposals? Have any of them been undertaken and has there been any work done on these proposals?

[Translation into Navajo.]

MR. SMITH [translated from Navajo]. What I have stated here is that most of these negotiations have been made through chapter meetings, especially with the Oljato Chapter, primarily because most of the availability of water was in their district because of the previous exploration for mining.

This was reviewed with the Oljato Chapter at least three or four times; but, as you know, the Navajos really do not come to any agreement on such matters immediately, and I have told them that there were many resources available for any type of economic development in that area, especially for farming.

Also there was a group from New York that recommended a development, specifically, at Kayenta Junction on the Arizona side where they proposed a large motel, service stations and laundromats, and other appropriate economic developments. All of this was explained to the Oljato Chapter at their regular meetings, and none of these were approved by these chapters. Consequently, none of these plans have progressed to any substantial programs.

MR. GLICK. Thank you, Dr. Billison.

I'd like to turn to Mr. Todacheene now and ask a few questions relating to similar subjects, Mr. Todacheene. In your knowledge and experience, are you aware of any attempts by the tribe to develop its own resources, such as oil, as opposed to relying upon leasing of the land and receiving royalty payments?

MR. TODACHEENE. First of all, may I say that as one of the leaders of the Navajo people, before I go into answering your question, is that on behalf of my people I'd like to say that we would like to say thank you for the commissioners on civil rights to be on our land again. We think that what we say here, how we answer is a means whereby our people would be put on a better economic status, a better spiritual status, than we have experienced during the last two to three hundred years, and with that thought in mind, we certainly, as leaders, wish to say that what we say here, we hope and pray will find themselves in the form of legislation in the form of change of attitude in relation to the people that we have come in contact with the last 300 years. Certainly, this is our wish.

Therefore, some of us leaders are appreciative of the fact that you, gentlemen, ladies and gentlemen, can come forth and bring this impressive group here with a very impressive sign. I feel like I am at the Watergate. As of now, the way I've seen it on TV, but maybe I shouldn't compare this very soul-searching group, compared to that group. However, we are impressed and with that context, with that thought in mind, I would like to answer your question, sir.

First of all, I think it has always been the thinking of the Navajo people—and with that in mind, we are now, in trying to develop our resources, we have started mainly with timber, whereby we have set up a board composed of Indians and non-Indians in trying to get the most dollar value out of resource in terms of what so-called profit, employment, and the proper utilization of that resource. And that is 100 percent what we call a entity or an activity.

We also have gone into the utilities. Thus, the Navajo Tribe operates and owns 100 percent the operation and furnishing of electricity, gas, and operation of some of the major towns' sewage disposal, and as of now we also have developed other boards such as the Navajo agricultural products industry board, which is also composed of half Navajo and half non-Indian boards, people who have experience in the agricultural field.

We hope that we could develop the Navajo irrigation project which encompasses 110,000 acres in the northeast corner of the Navajo lands, east of Shiprock, New Mexico, and southeast of Farmington, New Mexico, and we have gone along that.

We also have tried to get another entity such as the Navajo housing development enterprise, which is less than a year old, trying to develop housing. These are 100 percent Indian- or Navajo-owned, and the outside of the first two activities I've mentioned, the Navajo forest products and Navajo utility authority, the others we would consider them a success. The others are on their way.

So much for that type of entity.

Now, as we go into the more competitive fields such as the oil and gas business, where the Federal Government had a 27½ depletion allowance as late as 1972—'71 or '72—when we get into—try to get into that entity, experience has shown that we have been hampered so to speak. I'll take a case in point.

Back in 1952 to 1957, under the chairmanship of Mr. Paul Jones, the tribe tried to develop that resource, oil and gas, as a partnership, and so they approached one of the majors, namely, Delhide, Taylor Company, to become partners on a 50–50 basis as terms of development and also to share in the profits. So when that came about, I think that this was approved of the certain lands through the various channels that we Navajos and other Indians have to go through that in our thinking as leaders this was greatly discouraged because the more competitive, the more profit in some of these resources, that there are more major corporations and companies that want to be involved.

Consequently, since most of the ultimate agreements are handled by the Secretary of Interior, one person who is subject to all the shortcomings of any human being, and with all the lobbying done at that level in Washington, I think that in the case of this type of proposition, when the tribe tried to have a joint venture with one company the opposition was so great that it was defeated. And so I would say that we have tried to make those moves along the lines and I assume that we could probably try to do that in other resources which we don't have.

Most recently we are trying to develop the uranium fields along similar lines. I think we are at the point where we have gotten to at least five major companies on the same type of thinking, so-called joint venture, going on a 50–50 basis whereby we will get the bigger share of the profit, bigger share for the employment, and more proper utilization of our resources in terms of, under the laws of the Environmental Protection Agency.

If we could only go that route we probably could put the land back in better condition, provide better employment for our people, more training than that which we are doing because thus far, I think that what is happening, where we just go on a lease basis and get royalty, and all the things that we expect that we put into some of our leases is not forthcoming.

And so I will say that some of us are very fearful that when it comes to the powers that be, the Department of Interior level, some of us fear that there will be a terrific amount of lobbying to discourage this kind of a thing.

Of course, we also have felt—some of us have felt—that we should develop some of the coal resources that I think that Mr. Harris Arthur has talked about, on our own or on a joint venture. But as of now we don't have the technical know-how in our own people, nor can we get the capital that is required even though we do find the technical help.

The reason is that it takes a lot of money. It takes $200,000, $300,000, half a billion dollars, to develop some of these things by ourselves. And, as of now, the way the banks are doing business and so forth, which requires a lot of collateral, that we could not probably have the most difficult thing to do because the land that we live on is held collectively in trust and as of now I don't think the Congress, under whose thumb we are, have allowed us to even use the realty part of our resources to put down as collateral. So we are hindered in that direction again because when we try to borrow money in that amount we do have to have a terrific amount of collateral.

But that has been in the thinking and there again since 1950 the coal has started becoming more competitive. From 1950 to 1960 the soft coal that we have on the Navajo country was practically out of business, but as of 1960 to this day because of the latest developments, chemically and through what was described by Mr. Harris as gasification and new methods, it looks as though the price of coal is coming back, and I presume if we ever go into this kind of a venture, if we decided to mine that coal, that we'd probably run into a lot of politics, a lot of lobbying at the Washington level by the major corporations of America.

So, I would like to say to the Commissioners, sir, that the way our government is set up that we wish—we'd like to request the Commissioners, the Congress, that possibly at the Washington level, that all of this kind of a thing, development, that the consideration of maybe putting our affairs in the hands of a commission instead of just one Secretary of Interior, might be better because we understand whatever the aim is, the more people who are oriented to that aim—in this case, more justice in mind—the better economic development in mind for the American Indians, I presume the more in numbers, the better the justice.

So, we'd like to ask that the Commission on Civil Rights be in support of the idea that at the Washington level, possibly a commission on Indian affairs in the number, 12, a dozen people, I think more in line where we wouldn't be shot out of the saddle. When we think in terms of getting to the more competitive, the more lucrative development resources, it wouldn't fall under one man.

Does that answer your question, sir?

MR. GLICK. Yes, very well, Mr. Todacheene. Thank you.

Mr. Chairman, I have no questions.

ACTING CHAIRMAN HORN. Let me ask just one factual question here. When that 1952 plan was turned down, was that under Secretary Krug or Secretary McKay? Do you happen to recall?

MR. TODACHEENE. I don't recall. I think it was Secretary McKay.

ACTING CHAIRMAN HORN. Let's begin the questioning now with Commissioner Freeman.

COMMISSIONER FREEMAN. The question which I have to ask, I suppose, could be either for Mr. Arthur or Mr. Todacheene on the basis of the last statement Mr. Todacheene made. I would like to go back to the coal gasification plans in the Burnham area and where the proposal was rejected.

The question that I have is whether the chapter or the tribal council had on its own initiated or tried to develop a counterproposal, that would be followed perhaps with the procedures that are used by the tribal council in overriding a vote of a chapter as to the extent to which they let the members of the tribe know the basis on which they act or all of the information they need to know concerning the proposal?

ACTING CHAIRMAN HORN. Mr. Harris Arthur, you might want to answer that.

MR. ARTHUR. Well, in this specific case, we, in rejecting the proposal, had made it clear through general statements some of the reasons that we had for rejecting these proposals. And we stated clearly that we needed and we wanted and desired some clarifications on some of the issues and the problems concerning this type of development that would affect the Burnham people, or the Navajo people.

One of the primary concerns is, of course, the definition of what specific rights—we realize that we do not have legal rights as such to title to the land, only use and occupation. But we do strongly feel that we do have some sort of equitable right to the land, and we wanted to know some specific answers as to how the people that are not using the land would be compensated, and also there was grave concern about reclamation of the land as the people had witnessed, are witnessing reclamation efforts on the Utah lease right now. And they were quite concerned that adequate reclamation was, in fact, not possible and wasn't being done. Although there are efforts being made and of course we all know this is a very marginal area for reclamation, but we are concerned about it and we weren't satisfied with any efforts over there.

And of course then the question of employment was another area of concern, although the developers had made verbal promises that as many qualified Navajos as can be obtained would work in these plants. This statement, of course, has been—this line has been fed us many, many times. Consequently, I am not an authority on it but I understand the specific problems in this area, Page at Navajo power plant right now, and I know these problems exist at the Navajo mine and Arizona public service plant in the Four Corners area.

Now, what we wanted or suggested were, of course, guarantees that our people be guaranteed employment and if, say, they used the line that there aren't any qualified Navajos, then I think that developers should be given the responsibility or should have the moral responsibility to meet the technology deficit. Take, for instance, El Paso Natural Gas Company, they have been on the reservation for 25 years and not one single Navajo professional has been produced.

COMMISSIONER FREEMAN. This comes to the next question that I am asking. And this probably—the parallel will be what our country would do for an underdeveloped country. If under the AID, Agency for International Development programs, there would be persons going in and recognizing that there needs to be training, with the understanding that the contract level is that for every manager there would be a manager under training.

Is there a possibility that the Navajo Tribal Council could recommend to the Department or Secretary of Interior that there would be no industry on the Navajo Reservation unless for every person in a supervisory position there would be a Navajo by his side, or her side, getting training? Could you submit that to the Secretary of Interior and indicate to me your opinion as to what the response would be?

MR. ARTHUR. Well, this type of alternative, of course, would be most welcome but unfortunately—I did not quite answer your first question—unfortunately we have not— No one from the BIA or the tribe at the administrative level has come down and sat down with us and said, "Look, what are your problems, what are your concerns, what do you suggest?"

We have not been able to convey this other than through the news media and through—by verbal means, through our elected official, who of course is a councilman who should be responsible for this, but there are many of us who feel that maybe he either has another alternative that he's negotiating in our behalf—we haven't found out yet—but an alternative such as you have outlined is certainly most welcome. That, if the tribal council would back the desires of the local people, then this type of thing would of course fulfill some of the questions, would answer some of the questions that we have concerning employment and the lack of technology.

COMMISSIONER FREEMAN. Mr. Todacheene.

MR. TODACHEENE. May I answer you in this fashion, ma'am, gentlemen of the Commission.

I think that what we do at this reservation level is, in some good cases, I would say, is minor.

I think that if the United States could basically honor the treaty that we made in 1868 and which recognized us as an entity, if the United States Congress could stop diluting that treaty which basically made us an entity, we know that the United States doesn't make any treaties unless it is a sovereign entity. This has been confirmed by Congress.

But the Congress, we feel, has diluted, in the sense that where there are reservations—in our case, our Navajo Nation extends into Utah, Arizona, Colorado, and New Mexico—that they do not protect what they sign. They do not protect what they ratified. This is the United States Congress.

Consequently, we have the trouble of the States coming and trying to usurp the powers of self-government, the powers of sovereignty, and which ties into the contracts. The unions in these States put the pressure on some of these companies, and they also tried to extend their taxing power on what we have developed on the reservation. This is what I mean, "diluting."

Now, if the United States can set up a commission to protect the rights and recognize our treaties, and if we can determine our own destiny as a commonwealth with the United States, without all these layers of authority that are being condoned now, I think we are better off because we want to govern our land like any entity. We want the power to regulate it like an entity.

And, yet, this is not being done because when, any time, we put a big—we try to make a deal with some company, the States are trying to tax it. They are taking the money out of our pockets. And the United States has not done anything to stop that.

Here we sit, and it all ends up in banging our heads together at this level.

We feel that the biggest answer to straighten this out is to reread our treaties and give us that which is interpreted into these treaties where we are an entity, where we can rule our own lands, our own people, I think that will straighten a lot of these things out, ma'am.

ACTING CHAIRMAN HORN. Since the 1868 treaty has been mentioned, I would like it to be introduced as Exhibit 6 in the record at this point.

[The document referred to was marked as Exhibit No. 6 for identification and received in evidence.]

ACTING CHAIRMAN HORN. Go ahead, Mrs. Freeman.

COMMISSIONER FREEMAN. Mr. Todacheene, you were referring to the lack of technical know-how, and that is the reason why I asked the question as to ways in which, if you were going to have a contract with an industry or a lease with an industry, you might require them to help provide the technical know-how.

I believe that perhaps you may have overlooked the question that I had asked of Mr. Arthur and you. And that is, do you believe that the Navajo Tribal Council should require, in every future contract or lease with a company, that they provide from the top level down—not just the Indian preference clause at the labor section of it—but at the top level down with respect to technical assistance, should they provide for training at that level in all future contracts?

MR. TODACHEENE. I think that if some of these agreements can be, maybe, enforceable in our courts—that as of now, the United States, the Federal Government says that we more or less don't have any jurisdiction over non-Navajos—that if our treaties and our sovereignty is recognized and our courts can help enforce some of these agreements, I think it will work.

But under this system where, even though we put all those things in our contracts and the United States does not, even though they are a party to that, does not enforce it, it is just a piece of paper.

ACTING CHAIRMAN HORN. Do you feel it is a good idea, if you had such an agreement and you could get it enforced with reference to professionals in, say, an oil pipeline, a commercial establishment, whatever, that, in order for that outside private corporation or other entity to come onto the Navajo Reservation, that they would have to provide, let us say, an apprenticeship, internship, training, educational program for Navajos alongside of non-Navajos that come onto the reservation, do you feel that is a good recommendation as a matter of public policy?

MR. TODACHEENE. Yes, we have been putting those into our leases. It does say "training," but it is not happening because the people, the guardians, the United States says, "I am going to protect you Indians. You are going to be under my wing." And yet, we put those into our contracts, but nobody enforces it. They are in our contracts, and it is an excellent idea—

ACTING CHAIRMAN HORN. Yes. I think Mrs. Freeman's question—went beyond the Navajo preference clause and really directed at not simply a certain goal or proportion or percentage of employees of the outside entity should be Navajos, but specifically directed at professionals, those that make rather large salaries of the executive, engineer, technical class group, and to really write the contract so that that is specified and enforceable, or, in essence, they do not have a lease.

MR. TODACHEENE. Yes, sir.

COMMISSIONER FREEMAN. That's the point I make.

MR. TODACHEENE. Yes, ma'am.

ACTING CHAIRMAN HORN. Commissioner Ruiz.

COMMISSIONER RUIZ. I am a lawyer on treaty law, and I particularly noted your thought that the treaty has been diluted by the Congress. A treaty made with a sovereign state cannot be diluted or watered down by the Congress. And many of the congressional laws, in my personal opinion, are contrary to the Constitution of the United States because it is the Constitution of the United States which is supreme. When it says, "and the treaty shall be supreme," this is just like the Constitution.

It may be that States are intruding on your sovereign rights, and I believe you should continue to press that particular point because it is going to be ripe very soon for our Supreme Court to go back and start again with an original decision made by John Marshall as to the rights of the Cherokees, of which one of our Presidents said, "Now, try to enforce the law."

It is a very interesting concept.

Oftentimes, our Supreme Court's attention is oftentimes called to those concepts. And you have been patient for a long time. Get your counsel. Press that point. It is very important. And one of these days, you are liable to come up with a constitutional decision in your favor all the way back.

I have no further questions.

ACTING CHAIRMAN HORN. Commissioner Rankin.

COMMISSIONER RANKIN. I want to ask Mr. Arthur some procedural questions, if I may. In the first place, you said since the energy crisis has developed, there has been considerable pressure put upon you to develop the energy resources. Is that correct?

MR. ARTHUR. This is true.

COMMISSIONER RANKIN. From whom has this pressure come from?

MR. ARTHUR. The developers, El Paso Natural Gas Company and —

COMMISSIONER RANKIN. The companies, not the government?

MR. ARTHUR. No, not— Well, I don't know whether— I am not involved in tribal government up here. I wouldn't know. There may have been. I think Mr. Todacheene can answer you.

COMMISSIONER RANKIN. What about the Federal Government from Washington? Has the Federal Government from Washington put any pressure on?

MR. ARTHUR. We were told at one meeting by representatives of the tribal government that it was not the decision of the Navajo Tribal Council to decide these issues, that Washington had the say-so, and he had the big stick.

COMMISSIONER RANKIN. Well, now, these last two agreements with El Paso and Utah Company, Burnham Chapter has turned them down, am I correct in that?

MR. ARTHUR. Well, yes.

COMMISSIONER RANKIN. Now, when you turned them down, did you turn them down flatly, or did you try to renegotiate with them, putting in the provisions that you so desired?

MR. ARTHUR. No. We turned it down flatly. We said, for specific reasons, until such time as some of these questions and issues are resolved and clarified, at this time our position should be no and it is no.

COMMISSIONER RANKIN. Have they expressed willingness to renegotiate the contract?

MR. ARTHUR. Nobody has come forward to us, like I said, formally, and sat down to negotiate or to resolve some of the problems. No one has.

COMMISSIONER RANKIN. Can I ask another question, because I am interested. Does the chapter have good legal advice? Do you have good lawyers who complete with El Paso and Utah and other big corporations?

MR. ARTHUR. We probably have access to the legal department of the Navajo Tribe. But presently, in the atmosphere, you have to have a concept of what our political process is like out here on the reservation.

We probably do have some access to the legal department, though we have not been offered, or I don't think we have formally asked. We did seek information from them, and they did give us certain information, such as present agreements in regard to the coal lease and in regard to permission to drill and so forth.

But as far as legal advice, like the Burnham Chapter had a legal counsel standing beside it, no, we don't have one.

COMMISSIONER RANKIN. Do you think legal counsel might have helped there if the lawyers had put it up to Utah or El Paso, "We do not like this contract for the following reasons?" And could you have done business with the corporation then or not?

I am just throwing out these suggestions.

MR. ARTHUR. Well, it is—let me clarify something here. Maybe that would help.

It is not the position of the Burnham Chapter to, say, veto any sort of development that might be beneficial to the rest of the reservation. Nor should any individual chapters have this exclusive right. We believe that.

But, presently, we are concerned that we do not have any recourse or any means whereby we feel like we have meaningful input into development. For these reasons we took a stand because no one was concerned about our problems, except ourselves, so it seemed.

COMMISSIONER RANKIN. Well, what if you had completed this agreement. Who else would have had to approve it, in addition to the Burnham Chapter?

MR. ARTHUR. Well, I don't really—we recognize the fact that, legally, the Tribal Council can tell us to take a flying leap, legally.

But in the atmosphere of tribal politics, so to speak, it seems that the Federal Government—I mean, that the tribal government is more responsible to political pressures at the local level.

It is interesting to listen to Mr. MacDonald make a statement about how the BIA at the Washington level was not responsive to the Indian tribes down here—well, perhaps, even though they may have indirect representation through Congressmen and Senators. But we sometimes feel, at the chapter level, that this is how we look at the tribal administration up here in Window Rock from the chapter.

COMMISSIONER RANKIN. Well, could the Bureau of Indian Affairs, the Department of Interior veto your agreement if you had completed it with these corporations?

MR. ARTHUR. Like I said, I don't think the chapter should—is not in a position to negotiate a formal contract with these developers. You see, what we are asking is that some of our concerns and some of our problems that we feel would exist down there—if you bring in this type of development—should be considered in whoever is responsible for negotiating these contracts.

COMMISSIONER RANKIN. Now, who should negotiate it, then in your mind?

MR. ARTHUR. Well, in my mind, I think the tribal government should negotiate it.

COMMISSIONER RANKIN. The tribal government?

MR. ARTHUR. Right.

COMMISSIONER RANKIN. But the tribal government has done nothing in this respect as yet?

MR. ARTHUR. They—I feel like they haven't come down to us and said, "What is your concern?" I know, specifically, that our representative has not sat down and tried to work out some of the problems that we are concerned with.

COMMISSIONER RANKIN. You just might do something along that line that might get it started.

MR. ARTHUR. I hope so.

COMMISSIONER RANKIN. Thank you.

MR. ARTHUR. Thank you.

ACTING CHAIRMAN HORN. Let me follow up on a point Commissioner Rankin made, Mr. Arthur, in relation to the chapter/tribal government relationships.

I think it would be helpful to members of the Commission if we could understand just whether these relationships are spelled out in writing on the Navajo Reservation as to the role a chapter has and the various representatives from those areas in relation to the tribal council.

Is this in writing?

MR. ARTHUR. Yes. We have a very formal tribal code that spells this out. But following it, or following procedures and following the set-up that we have, those are two different things.

In reality, a lot of us feel that our representatives do not—are not responsive. You know, it's just a local political conflict, so to speak, local political process.

ACTING CHAIRMAN HORN. Would the Burnham Chapter have its own representative on the tribal council? Or would you be one of several chapters that elect or select a representative?

MR. ARTHUR. No. The Burnham Chapter presently has its own council delegate.

ACTING CHAIRMAN HORN. And this is a member of your chapter who is elected for what, a 4-year term?

MR. ARTHUR. A 4-year term.

ACTING CHAIRMAN HORN. To the tribal council?

MR. ARTHUR. Right.

ACTING CHAIRMAN HORN. Now, presumably, he can voice the interest of his constituents of the Burnham Chapter on this particular issue to the tribal council?

MR. ARTHUR. Yes. That presumption is there. Now, whether he will do it or not is another thing.

ACTING CHAIRMAN HORN. Do chapter representatives and delegates report back to the chapters on what goes on in tribal council meetings?

MR. ARTHUR. In general they have. But there are certain important issues that are not—they don't delve into it a whole lot. It's just superficial reports.

Take, for instance, this gasification issue. Well, if we would have been informed properly from the beginning, I'm sure we would have had some of these problems worked out by now.

ACTING CHAIRMAN HORN. How often does the Burnham Chapter meet?

MR. ARTHUR. I believe each chapter tries to meet twice a month. I'm not sure. I think Mr. Todacheene could answer that.

ACTING CHAIRMAN HORN. Mr. Todacheene, how often does the tribal council meet?

MR. TODACHEENE. Coming back to the Burnham Chapter, the tribal council is composed of 74 members, and the tribal council represents a total of 101 chapters. And each councilman represents, in some cases, one chapter. And in a few instances, some represent two chapters. And in one case I know, one councilman represents seven chapters.

Of course, these chapters vary in size with the population. The smallest chapter constitutes about 300 people, and the largest chapter constitutes about seven or eight thousand.

Each chapter is governed or represented by another elective position. It is called the chapter officer. There is a chapter president. He is elected every 4 years. There's the vice-president. He is elected every 4 years. There's the secretary-treasurer that is elected every 4 years. And then we have a special grazing committee member that is, most of them have, with each chapter. So, roughly, just generally speaking, there's about five elective offices within each chapter as of now.

And coming back to Burnham again, they are represented at the tribal council level through one councilman as of now.

ACTING CHAIRMAN HORN. In your judgment, do the internal methods of the tribe for getting information from the chapters and back to the chapters, is this working effectively on the whole?

MR. TODACHEENE. Well, under the circumstances that we are in right now, I would say it does work very well. Because, in the tribal law, the tribal council gives it some independence, to each chapter, to decide for themselves as to how they would operate, even maybe soliciting their own funds to operate their own chapters, the buildings and the operations they have.

So I would say that under the setup, under the circumstances that we are in right now, where we are under a Federal trusteeship, I would say that in most cases, they work.

ACTING CHAIRMAN HORN. Mr. Arthur, do you see any ways to improve the internal communication here on some of these economic development matters between the chapter and tribe?

MR. ARTHUR. Yes. In view of our situation at Burnham, I would tend to disagree with Mr. Todacheene. I would say that the system that is imposed on us, of course, is a foreign concept to a society such as the Navajo, the traditional society. There are conflicts.

If we were to develop major industry on the reservation, in order to get communication back and forth from the chapter to the council, I think several improvements could be made if, take for instance, public hearings were held, such as this, at the chapter level with various agencies throughout the reservation. These would certainly be most helpful.

To this date, I know of no such public hearings for any sort of major development. These things, like the coal leases and the mining operations and the power plants, were, for the most part, negotiated and settled without major input from the local people. I think major—I think public hearings is one way we could do it.

Also, if our elected officials would concede some of the centralized authority or power structure up here at the Window Rock level back down to the chapter people, you would have a more responsive form of government that you could communicate between the local grassroots people and the government.

ACTING CHAIRMAN HORN. Let us introduce, at this point, in the record as Exhibit 7 the relevant documents which spell out the relationship between the tribal council and the local chapters.

[The document referred to was marked as Exhibit No. 7 for identification and received in evidence.]

ACTING CHAIRMAN HORN. Let me ask one last question.

It was mentioned during the course of the testimony, the unions putting pressure on the companies. I wonder if you would like to elaborate on that. To what extent have the various unions been helpful or not helpful in terms of hiring Navajos?

MR. TODACHEENE. About a year ago—I don't have the papers—but this union represents the laborers in Phoenix. And a business agent by the name of Mr. Salado—I want to be correct; I don't have the immediate records—he brought his union to Page and stopped all the project at Page because of the fact that Navajos, he said, were given preference in employment. That was a case in point that happened about a year ago.

ACTING CHAIRMAN HORN. What happened as a result of this?

MR. TODACHEENE. The work stopped, and I think that our own people were forced to sign up for unions. They were forced to go from the reservation clear to Flagstaff to sign up to become members.

ACTING CHAIRMAN HORN. Prior to getting a job?

MR. TODACHEENE. Prior to getting a job.

ACTING CHAIRMAN HORN. My understanding, Counsel Glick, of the Taft-Hartley Act is that there can be no closed shop which requires an individual to join a union before they secure a job, that the Taft-Hartley Act provides for a union shop in which one can get a job and then have an opportunity to join the union within a 30-day period; and, thirdly, the State of Arizona, the last I knew, had a so-called right-to-work law under Section 14(b) of the Taft-Hartley Act which mandates an open shop in any instance.

I would like to see the counsel of this Commission contact the appropriate labor unions that have been mentioned in this testimony, placing specific questions along the lines I had indicated, to them, and get their answer on this particular situation at Page.

MR. GLICK. We will do that.

MR. TODACHEENE. That's what I was saying, that that is where the States, through unions, through trying to tax capital gains on reservation development, their hands are not being slapped by the Federal Government, because the Federal Government recognizes an entity. If our people want unions, the National Labor Relations Board should recognize such under the Taft-Hartley law for the Navajo Nation; not in Arizona, New Mexico, Utah, or Colorado.

I think this is where the trouble is, because one side, we have a treaty, and that's why I say it's been watered down.

ACTING CHAIRMAN HORN. Do you know, offhand, if the State of Arizona takes the position that the so-called right-to-work law of the State does not apply on the reservation? Have you heard one way or the other on that, since it is a State law and this is a Federal reservation?

MR. TODACHEENE. The Navajo Tribe has its own right-to-work law, and because people get so overzealous because nobody backs up our agreements, these just become paper. We feel that our right-to-work law, rather than the State of Arizona, should be recognized by the Federal Government; namely, the National Labor Relations Board should recognize it.

ACTING CHAIRMAN HORN. Thank you very much.

Are there any further questions?

Commissioner Freeman.

COMMISSIONER FREEMAN. Mr. Todacheene, my question is with respect to the administration of a contract. You referred to the fact that the Navajo preference clause was not being enforced by the Federal Government. Let us take a situation where there is a contract between the tribal council and a contractor. Who supervises that contract on a day-to-day basis? Is it a member or a representative of the tribal council?

MR. TODACHEENE. As of now, with what meager funds we have which come from some of these resources development, we try to look after our own business. But, then, so we try to look at it. We have our own lawyers. And beside that, we have the Bureau of Indian Affairs. They are our guardians. They are our trustees. So between the two, ourselves and the Federal Government working together, we should be able to enforce a lot of these that you are asking about.

COMMISSIONER FREEMAN. Let me give you a specific. Suppose there was—let us take this building that we are in—that there was a contract to furnish chairs for this building, and the contractor was to bring in 400 folding chairs. Instead of bringing in 400 folding chairs, the contractor brought in 400 pillows. What would the tribal council do?

MR. TODACHEENE. Well, in the case—we're not talking about chairs. We're talking about human beings.

COMMISSIONER FREEMAN. I mean, if you were going to build this building—I'm just trying to get an example of how a contract is administered.

MR. TODACHEENE. The people—the contracts we have been writing out say "preferential treatment." It talks about training Navajos.

COMMISSIONER FREEMAN. What I'm trying to find out is, does the tribal council then have the right to terminate the contract?

MR. TODACHEENE. Well, if you ever try to terminate a contract under very loose terms, you are just in for big trouble. So—but I say, again, that our contracts read that they shall hire Navajos, give them preferential treatment where qualified. So to some of us, that is quite loose. Possibly we should go the route and say, "For every five people that you hire, you should train two of them or two-and-a-half right on the job."

But I don't think that we have ever really pinpointed those things because at the time the contract is being made, the contractor says, "I have a million dollar job. I have to have it done in 120 days. I have to have it done in 180 days. I must have skilled labor." So under that concept, the contractors skip around the words "where qualified" and "will be trained feasibly." And so we are in that type of a situation.

Now, if there is ample time and so forth, I presume there will probably be training. This is under the construction period. But in cases on the permanent type, I think that some of these are being honored. But most of the downfall in terms of not having our people work is there in the contract period, as of now.

COMMISSIONER FREEMAN. Mr. Arthur, I am still trying to find out what the rights of the tribal council are with respect to termination of a contract or enforcing the nondiscrimination clause. Do you have anything to add to what Mr. Todacheene said?

MR. ARTHUR. Well, the way I understand that—and I am not an authority on contracts by no means; I am not an authority on labor—but it is my understanding that in your specific example of the chairs, if such a thing were to happen, I suppose the legal department would be directed to prosecute or to follow through with whatever means was available to them to settle it. That is, the tribal legal department.

I don't know whether you are familiar with the legal setup—the legal counsel of the tribal government or not. But somebody in that area would be responsible, is my understanding.

Now, whether that would apply to major contracts such as the coal leases where, if there were a violation of the coal lease contract, I suppose the general counsel would then be responsible as to correcting it.

COMMISSIONER FREEMAN. I have been advised that we will have another witness who will probably be able to give us this information. So thank you very much.

ACTING CHAIRMAN HORN. Mr. Todacheene, in your 11 years on the Tribal Council, has there ever been a motion made by any member of the council to cancel a contract on these grounds that Mrs. Freeman has mentioned? Failure to carry out the Navajo preference clause?

MR. TODACHEENE. I don't think there has ever been, as far as I know, outside of a trader.

But I never have known where the tribal council, they would, say, try to cut a contract because we feel we operate—we have two cultures involved here.

Our culture, in our culture, we don't know anything. We don't know paper. We don't have pencils. Our culture, basically, was such that your word was your bond.

Consequently, when we make a lot of these things, I think that, automatically, we assume that when we say these things they are going to be honored, we don't think that anybody's going to slip around and get into the gray area and not fulfill them. That's our basic concept.

So with whatever contracts we think that are made, we think they are going to be carried out. That's the way we feel because our culture demanded it. But maybe we should come and start putting everything, what to do, by paragraphs and by periods. Maybe then we will be in a clear position, black and white, as Mrs. Freeman said, under that concept.

But when we give people your philosophy into this contract, it seems like it's not working.

ACTING CHAIRMAN HORN. Mr. Glick, any further questions?

MR. GLICK. No, sir. I do not have any further questions at this time.

ACTING CHAIRMAN HORN. Let me just identify the individual sitting next to Mr. Glick who is Marty Kahn and who is sitting as a consultant. He is a former member of the Commission staff and will be with us through this phase of the hearings.

Are there any questions from my colleagues?

At this point, the Commission will take a 5–10 minute recess and begin again at 3:15. We are a little behind, but I think it has been for a good reason.

Mr. Arthur, Mr. Smith, Mr. Todacheene, you have had some very valuable information to give to the Commission. We have appreciated the time you have spent with us, and we want to thank you for appearing. And that is the reason we have gone way behind the time we allotted—because we found what you had to say most fascinating as a way to get at some of these basic concerns.

And I must say, Mr. Todacheene, we would hope that all cultures could adopt the premise, as you say, of the Navajo culture, that your word is your bond. It is a fairly sad day that we do have to put a lot of these things in writing and dot the i's and cross the t's as they say.

I would like the panel on economic development office of the Navajo Tribe, or Mr. Hanagarne, the acting director, to be ready to go at 3:15.

We will recess until 3:15.

ACTING CHAIRMAN HORN. Our next witness will be Mr. Frank Hanagarne of the economic development office of the Navajo Tribe. Mr. Hanagarne.

[Mr. Frank Hanagarne was sworn and testified as follows.]

TESTIMONY OF MR. FRANK HANAGARNE, ACTING DIRECTOR, OFFICE OF PROGRAM DEVELOPMENT, NAVAJO TRIBE

ACTING CHAIRMAN HORN. Please be seated.

Mr. Glick.

MR. GLICK. Mr. Hanagarne, will you please, for the record, state your name, address, and occupation?

MR. HANAGARNE. My name is Frank Hanagarne. I am the acting director of the office of program development for the Navajo Tribe. I reside in Window Rock, Arizona.

MR. GLICK. How long have you been the acting director for the office of program development?

MR. HANAGARNE. I have been acting director for the office of programs since June 7, 1973, and I have been employed by the tribe since January 24, 1972.

MR. GLICK. With the office of program development?

MR. HANAGARNE. Yes.

MR. GLICK. Thank you. Can you tell how long the office of program development has been in existence and, generally, what its functions and objectives are?

MR. HANAGARNE. The office of program development has been formulated by the Navajo Tribal Council. I don't know the exact date. But it's been in office for about 2½ years at this point.

Now, the office of program development specifically states its function: it develops programs that would be of benefit to the Navajo Tribe in terms of economic development. At the present time, we have a staff of some 22 individuals of—including professionals, secretaries, and aides.

Now, the basic function of the office of program development is—which is divided into two sections. One, which we call the development section whereby we develop industrial, commercial, tourism, and small business on the Navajo Reservation. The other portion of our department, which we call the planning department, is involved in overall reservation planning, which includes working with chapters, various and sundry tribal organizations, enterprises. But, basically, they are involved in urban planning, transportation planning, manpower planning, and general economics as far as the Navajo Reservation is concerned.

MR. GLICK. Before the tribe established the office of program development, were similar functions performed by any other agency?

MR. HANAGARNE. I believe that the Bureau of Indian Affairs had an economic development section in their group. However, the office of program development, at the present time, under contract with the Bureau of Indian Affairs, receives monies from the Bureau of Indian Affairs for industrial, commercial, and tourism development.

MR. GLICK. So the Bureau does provide some financing for the office of program development?

MR. HANAGARNE. Yes. They do, as other Federal agencies do.

MR. GLICK. On a grant program or contracting basis or what?

MR. HANAGARNE. Well, with the Bureau of Indian Affairs, this is a contract. With other agencies, the only other two agencies that we are funded under from the Federal Government, at the present time, is the Housing and Urban Development [Department] and Economic Development Administration and the Navajo Tribe.

So we have, basically, four funding sources.

MR. GLICK. Can you give an assessment, from your own point of view, of the achievements or lack thereof of the BIA when it was responsible for the economic program development? Are you familiar—

MR. HANAGARNE. I'm sorry.

MR. GLICK. Are you familiar with that?

MR. HANAGARNE. No, I am not that familiar. The office of program development had been functioning when I became an employee of the Navajo Tribe. So I do not know what transpired prior to that.

MR. GLICK. Now, can you give us an assessment of the current state of economic development on the reservation, industrial, agricultural, extractive. What is happening right now?

MR. HANAGARNE. Well, I think that Chairman MacDonald specifically stated what our plans are for economic development, and those things that are entailed in a program such as this nature. And I think the important thing that has been done at this point is the fact that, one, the Navajo Nation has identified specifically what their problems are and the problems that we have lived with for many years.

Now that we have identified these problems, such as the health, education, the unemployment, the lack of roads, other transportation, that now it is time to implement those plans that are necessary to develop those, let's call them, lackings for the economic development of the Navajo Nation.

Now, along those lines, our office is directly related to these programs. We have an intensive industrial development program whereby we either develop enterprises of the Navajo Tribe or we also bring in private industry from the outside with a program that would be of benefit to the private industry and also to the Navajo Tribe itself, in terms of employment and investment in a facility that is leasable to a private firm. In addition to that, we also are taking a strong look at the tourism development potential on the Navajo Reservation.

And at this time, the office of program development is in the process—again, as a part of this 10-year plan—is identifying the potential that the Navajo Reservation has in terms of what things can be developed that will be self-supporting, so to speak, and that will be of benefit to the Navajo people. And this, of course, is an intensive study. Or, let us say, not necessarily a "study," but an evaluation of what our resources are. And from this evaluation, we will, in turn, be able to determine what direction needs to be taken for a viable tourism industry on the Navajo Reservation.

MR. GLICK. Is there anything in the works right now that is nearing fruition, any kind of attraction of industry or any kind of new plant facility or commercial facility that is going to be actually in being?

MR. HANAGARNE. Right. We are in the process, at the present time, of negotiating with an industrial firm that will be locating on one of our industrial parks which we, at the present time frame, that we will consummate or execute an agreement before January of this year.

We are also in the process of developing a shopping center and motel and restaurant facilities on two locations on the reservation, specifically, Tuba City and Shiprock, New Mexico.

MR. GLICK. These are—in Tuba City and Shiprock—these are going to be leased lands and commercial developers will be doing the construction? Or is it the tribe itself that is going to be entering into it?

MR. HANAGARNE. Well, let us say at this point that the tribe is going to be the developer. And as far as the shopping center is concerned, we are in the process of negotiating with a key tenant and then other cotenants that would be a part of this shopping center.

MR. GLICK. Mr. Chairman, I have no further questions at this time.

ACTING CHAIRMAN HORN. Commissioner Ruiz.

COMMISSIONER RUIZ. In a purely capitalistic system, oftentimes, the answer is, economic development depends substantially, solely, on money. Now, if you were to single out—because you are in a phase of transition here and it is not purely a capitalistic setup—if you were to single out the greatest specific impediment to economic development, other than the infusion of massive doses of money, what would you single out specifically as the greatest impediment?

MR. HANAGARNE. Well, I think that in order to answer that question, I would like to answer this way. It is that, first of all, there are some inherent problems or inherent difficulties that you have when you are underdeveloped. And as a result of this, one, you do not—we keep coming back to this money thing—we do have a problem with capital, as far as outside sources. We have problems of having sufficient funds within our own to do those things that we feel necessary.

Now, when you consider economic development, because of the many facets that are involved in this such as the housing, the unemployment, the lack of roads, the lack of transportation, it is that we are—let's face it, our biggest problem is the fact that we are almost starting from scratch. And I think, as a result of that, because we are lacking in so many things, that in itself creates an enormous problem because they are associated one with the other.

COMMISSIONER RUIZ. Now, that does not specifically answer my question. I was looking for something like, for example, a prior witness mentioned the fact of joint venture where the tribe puts up natural resources and participates in profits as one possible alternative.

Inasmuch as you are concentrating on economic development, I was wondering whether that might give you an indication, as an alternative or something else, to simply the infusion of monies and if you could think of something that would be helpful along that line.

MR. HANAGARNE. Well, I think in terms of legislation at the Washington level would be very helpful. Now, what I mean by that, is that, one, I think that Chairman MacDonald made a point this morning of saying that we are brothers; the Bureau of Indian Affairs governs what we do. Now, regardless of what it is that we do, depending on the jurisdiction and the type of resolution that the Navajo Tribal Council comes up with, it still has to have the approval of the Bureau of Indian Affairs and/or the Secretary of the Interior.

Now, if there is legislation that would allow the Navajo Tribe to have possibly better access to some of the Federal agencies, such as the Highway Department—I think that this was brought out this morning—now, we, the Navajo Tribe, have implemented, by actually going through the Federal Aviation Administration and because of an enactment including Indian tribes as sponsors for aviation programs, that this has allowed us, one, to implement what we call our Navajo airport systems study. And I feel that because the Navajo Tribe was included within this legislation acting, or could act as the sponsor, that this speeded up some of the processes that we normally do not have access to through other Federal agencies, possibly.

COMMISSIONER RUIZ. In other words, your answer is more direct participation then, insofar as the tribe is concerned?

MR. HANAGARNE. Yes.

COMMISSIONER RUIZ. Through legislation that would permit that?

MR. HANAGARNE. That is correct. Yes.

COMMISSIONER RUIZ. Thank you.

ACTING CHAIRMAN HORN. Commissioner Rankin.

COMMISSIONER RANKIN. Mr. Hanagarne, would you say your job in your agency corresponds to the secretary of a chamber of commerce, and a chamber of commerce in a large American city?

MR. HANAGARNE. To a certain degree, yes, sir.

COMMISSIONER RANKIN. It's a little different, isn't it?

MR. HANAGARNE. It is different. When you get—one of the things— Well, one of our inherent problems—again, let us talk about industrial development a little bit—is that the Navajo Nation is in competition with the entire United States who, they, in turn—as we, are acting as the chamber of commerce, as you like, or sales representatives if you prefer, is that we are actually selling the Navajo Tribe. And what I mean by "selling" them is to make people knowledgeable of what we are, what we stand for, and those things that we can do for the outside world and let them know exactly what we are.

So, I say, we are in competition with other—well, the whole United States—outside the reservation because there are other people out there that are selling their towns, their communities, their people, and the advantages that they feel they have.

COMMISSIONER RANKIN. Although you have been just 4 months, you say, with your agency as director, did your agency take any stand on the gasification agreement that was proposed between El Paso and Utah?

MR. HANAGARNE. Of late, our office has just recently gotten involved into the thing. Now, I think as far as our involvement is concerned, is that as far as the office of program development being an entity of the Navajo tribal administration, that there are certain inputs that we feel we can put into some things that have to be considered, such as the social-economic impact of the gasification, the environmental impact. And all of these things have to be very carefully weighed by a number of individuals.

COMMISSIONER RANKIN. Couldn't you put in an employment contract, too? I mean, put in a provision that Navajo employment should take place under these contracts?

MR. HANAGARNE. Along that line, I think that this will be brought out with another witness that is going to appear before you tomorrow. It is that the Navajo Tribal Council recently approved, by resolution, the plan of operation of the office of Navajo labor relations, who is headed up by Mr. Tom Brose.

Now, they specifically now are working with contractors that are doing construction work on the reservation. They will also, in turn, negotiate contracts with the—any, actually—private industry that would locate on the Navajo Reservation, such as the individuals that are related to the coal gasification programs.

COMMISSIONER RANKIN. To whom do you report, Mr. Hanagarne?

MR. HANAGARNE. I report directly to the chairman, Mr. MacDonald.

COMMISSIONER RANKIN. Do you give him annual written reports or quarterly reports or how?

MR. HANAGARNE. We give him annual, quarterly, and sometimes weekly reports.

COMMISSIONER RANKIN. Have you given any of these reports to the staff?

Mr. Hanagarne. Pardon?

Commissioner Rankin. Have you given any of these reports to our staff here?

Mr. Hanagarne. No, I have not.

Commissioner Rankin. I just thought they might be interesting, some of them, to see what you have to say on this subject.

Mr. Hanagarne. I will be very happy to furnish any information that is required, as far as the quarterly reports are concerned.

Commissioner Rankin. Thank you.

Acting Chairman Horn. Thank you. Commissioner Freeman.

Commissioner Freeman. Mr. Hanagarne, you referred to a proposed contract for an industry to be started, I believe, in January.

Mr. Hanagarne. Yes.

Commissioner Freeman. And also a shopping center that is being considered.

I would like to know if you will tell the Commission what discussions were had with the various chapters to be affected, those where the industry and shopping centers would be located.

Mr. Hanagarne. All right. Specifically, within the Shiprock area. Let us talk about the shopping center, motel, restaurant complex.

In early 1972, I believe it was March, I personally attended four chapter meetings, discussing this project with the chapter officials and the local chapter people, at which time I obtained a resolution giving sanction for this particular type of project. All right. So we have that sanction. All right.

In Tuba City, the chapter there has sent in a resolution expressing the same sanction or interest for, actually, a shopping center, a motel, and a restaurant. All right.

So that the people at the chapter level, on those two particular projects, are knowledgeable about what is going to transpire because we presented it to them and explained to them the mechanics we had to go through to negotiate with key tenants in the shopping center.

Now, as far as the industrial portion of it is concerned, in Shiprock we have set aside a 50-acre industrial tract which has been withdrawn, so to speak, by the chapter for that specific purpose. At the present time, on this industrial park, the Fairchild Semi-Conductor facility is located. They are the only tenants at the present time. However, we anticipate, with the efforts that we have had in our industrial program of, one, as I pointed out, the industrial firm that will be locating there that we are currently negotiating with, that becaus [illegible] the fact that the chapter did approve the industrial park, that we then only have to go to get those other clearances that are necessary.

COMMISSIONER FREEMAN. What is the policy of your office with respect to a proposed facility in the event that the chapter would reject a specific facility, but would ask about an alternative? Would they have this right?

MR. HANAGARNE. I am not that familiar with the tribal code and just exactly what part the chapter does play in this. However, I would say at this time—well, let me explain one other thing, also.

It is that, one, first of all, the office of program development acts as staff advisors. We get programs together, and we have a subcommittee of the Navajo Tribal Council, the economic and planning committee, to whom we—who were councilmen made up our of the tribal council—and upon developing a program, we then, in turn, relate this program to them for their consideration and recommendation to whatever committee and/or the tribal council, if needed.

COMMISSIONER FREEMAN. Do you ever go beyond the tribal council—let me give you the example that Mr. Arthur gave when he suggested the value of something like a hearing; that suppose there would be a hearing, would you consider a hearing in which the Navajos in a particular chapter area might be invited to come and give their ideas as to what they would want to see developed in their area? How would you do this?

MR. HANAGARNE. I'm not quite—I don't quite follow what you were saying, Mrs. Freeman.

COMMISSIONER FREEMAN. What I am trying to find out is the extent to which your office solicits or invites from the several communities, localities, or chapters their ideas as to what kind of industries that they would like to see in the locality.

MR. HANAGARNE. I see. Okay, Well, more times than not, the way that this transpires is that if a chapter has a specific project that they would like to execute, so to speak— For example, let me take an example here—is that, along with the industrial program that we have, we have had some input from the Chinle Chapter whereby they requested that we initiate those things necessary in the legislative process to withdraw certain lands for an industrial park. All right. After having had many discussions with them and obtaining all the clearances, we, in turn, got an industrial park, so to speak.

The same thing—we are working on a number of projects that, one, if we have projects come up that the chapter is definitely interested in, then we meet with those individuals that are concerned—whether it would be a small group representing the chapter, such as a community action program group or the chapter themselves or representatives of that chapter which could include councilmen—we discuss those things that are necessary as to what has to be done to get that particular program or project off the ground, so to speak.

Does that answer your question?

COMMISSIONER FREEMAN. Yes.

MR. HANAGARNE. We act as liaison, actually, with the chapters. Now, I say that, as time and personnel permit.

COMMISSIONER FREEMAN. Thank you, Mr. Hanagarne.

ACTING CHAIRMAN HORN. Mr. Glick.

MR. GLICK. No questions.

ACTING CHAIRMAN HORN. Any further questions from my colleagues? If not, we thank you very much for joining with us this afternoon. We appreciate having your testimony.

The next witness on the printed schedule we will combine with a later witness.

Mr. Luke is the next witness.

And I just want to say for those who had a printed schedule, Mr. Miller will be appearing later in the afternoon. So if Mr. Luke will come forward, we would appreciate that.

[Mr. Paul Luke was sworn and testified as follows.]

TESTIMONY OF MR. PAUL LUKE, ECONOMIC DEVELOPMENT ADMINISTRATION, U.S. DEPARTMENT OF COMMERCE, PHOENIX, ARIZONA

ACTING CHAIRMAN HORN. Please be seated.

Mr. Glick.

MR. GLICK. Thank you, sir.

Mr. Luke, will you, for the record, please state your name, address, and occupation.

MR. LUKE. Paul Luke, economic development representative, Economic Development Administration, U.S. Department of Commerce, Phoenix, Arizona.

MR. GLICK. Mr. Luke, can you give us some description of the Economic Development Administration's program as it has related to the Navajo Reservation people in your experience?

MR. LUKE. Well, that would be quite vast. In fact, we have spent approximately $24 million on the reservation and in about 35 projects. And I have it delineated in a report on—it is called, "Results of a Partnership Between the American Indian and the Economic Development Administration, U.S. Department of Commerce," published in August 1973. In here, it gives a breakdown of the types of projects and the amounts we have spent on the reservation.

MR. GLICK. Mr. Chairman, with your permission, I would like to introduce that into the record, that report.

ACTING CHAIRMAN HORN. It will be entered as Exhibit 8.

MR. GLICK. Thank you.

[The document referred to was marked as Exhibit No. 8 for identification and received in evidence.]

MR. GLICK. Can you give us an idea of some, I think you said, 35 projects on the Navajo—

MR. LUKE. Approximately.

MR. GLICK. Well, can you give us an idea of a few of the major ones that EDA has been involved in?

MR. LUKE. Well, most recently, we have been involved in establishing an industrial park at Churck Rock, New Mexico, just east of Gallup. And that was a [$]1,200,000 roughly.

We have built a water and sewer system between Fort Defiance and Window Rock. Our primary thrust, I think, on the reservation here, has been in the public works field of water and sewer systems. Nearly every major community on the reservation has been the recipient of a water system, at least, and a sewer or sewage treatment system.

MR. GLICK. And this support comes in the form of grants to the tribe?

MR. LUKE. Yes, sir.

MR. GLICK. To build these facilities?

MR. LUKE. Yes, sir.

MR. GLICK. Now, can you give me some idea of how the tribe relates to EDA in determining what projects are the most appropriate ones? That is, does the tribe come to EDA for a suggestion for an improvement of some form or other, or is it that your office makes a survey and determines what would be the most suitable investment?

MR. LUKE. Well, my role as an economic development representative for the State of Arizona includes all 19 reservations and, obviously, it would be impossible for one man to make the kind of input into each reservation that would create that kind of activity. So I rely a great deal on the office of program development, Mr. Hanagarne and his office, who serve as the coordinating agency between the tribal council and our agency. And so my role simply is to work with them.

Now, we do require all designated areas, which all the reservations are designated areas that wish designation, we require them to prepare an overall economic development program. And in that document they define and analyze their potentials for economic development and define and point out the problems and come up with a suggested list of projects that would help cure some of the economic ills.

We, as all the other reservations, require the Navajos to do the same. And they have a project priority list which we work from in developing the assistance to the reservation.

MR. GLICK. Can you give me some idea of the length of time it takes for an application from the tribe to EDA for a grant to be processed?

MR. LUKE. Yes. It takes approximately 6 months to process an application. That is from the inception of the project. That is assuming that all of the documentation is there and the project is a good, clean one.

At our agencies, just like any other Federal agencies, it has a lot of other program input from such requirements as flood plains studies by the Corps of Engineers and the civil rights compliance and things like that. And as I say, assuming that all of this documentation is proper, we are usually able to process to a final conclusion within approximately 6 months.

MR. GLICK. Would that project proposal or request for a grant—I'm not sure what it is titled—have to be cleared by BIA before you would give it consideration?

MR. LUKE. Not necessarily. In the past, we have always, as a courtesy, naturally, informed the BIA. And, certainly, we would appreciate their responding to the program. But, ordinarily, they have always acknowledged and have agreed with the project.

MR. GLICK. But their sign-off has been required?

MR LUKE. Just as a letter of support, you might say, for the project.

MR. GLICK. I see. As a person involved in economic development, what do you see as the major problems for great economic development on the Navajo?

MR. LUKE. Well, I think it has already been stated very well by Mr. Hanagarne.

But among— Some of the things I see, of course, is the vast size of the reservation and 135,000 residents, roughly. And I think that we can provide the public works types of monies for the major growth areas on the reservation, such as areas like Tuba City and Kayenta and Chinle and Shiprock, certainly.

But to run water and sewer systems throughout the reservation, obviously, is impossible. So we are—and besides that, our program simply, the funding simply doesn't permit it. We have approximately $25 million to spend on Indian reservations a year. And we—of course, that goes for all the reservations throughout the United States, not just the Arizona ones. So that we select the projects on the basis of the severity of the area, the need, and that sort of thing. But—

MR. GLICK. Do I understand you to be saying that there are $25 million budgeted annually for development on Indian reservations?

MR. LUKE. No, sir. I wouldn't categorize it as a specific budget item. It just happens that we spend that kind of money, annually, on the reservations.

MR. GLICK. And that is throughout the United States?

MR. LUKE. Yes, sir.

MR. GLICK. Then the share of the Navajo would be, could be very, small?

MR. LUKE. Well, if you are talking about per capita basis, which is contrary to our agency policy. We don't work on a per capita or formula grant type of program.

MR. GLICK. But then how do you decide what the priorities are?

MR. LUKE. Well, we let the tribe decide what their priorities are, and then we try to work from the top and come down as money permits.

MR. GLICK. No. I was thinking in terms of priorities of different tribes. I mean, how is the pot divided up?

MR. LUKE. Well, I don't think we divide the pot up. It's a—if you want to call it—an allocation to each region according to the Indian population within each region, then the Arizona—if you will look at the statistics in that document—shows that it exceeds by more than—well, nearly triple the nearest State in terms of amounts of dollars we have given to the reservations.

MR. GLICK. I see. Thank you.

Mr. Chairman, I have no further questions.

ACTING CHAIRMAN HORN. Let me just follow up on this a second. You say the way it has worked out in the last fiscal year, the $25 million happened to have been allocated to Indian reservations throughout the United States?

MR. LUKE. Yes, sir.

ACTING CHAIRMAN HORN. Now, again, in Arizona, how much was allocated to Indian reservations?

MR. LUKE. Well, here again, it has not been allocated totally, as yet, but I imagine it will be in the $5 million figure, 6 million, possibly.

ACTING CHAIRMAN HORN. All right. So then, roughly 20 percent or more of what happens to have been allocated, based on this priority and filtering up process, has been allocated in Arizona. Now, the Navajos are, roughly, 51 percent of the population, Indian population, in Arizona. And I realize you said you do not do it on a per capita basis. And, yet, the Navajos are also almost—I guess, Mr. Glick—an eighth, would you say, of the American Indian population or maybe a seventh?

MR. GLICK. Yes.

ACTING CHAIRMAN HORN. You are talking about a 100 and—There are arguments over the statistics, that they range, from the Bureau of the Census' 90,000 on self-identification to the Bureau of Indian Affairs' 135,000 based on tribal roll. But let us just round it off conservatively, say 100,000 out of, roughly, 800,000 American Indians.

MR. GLICK. Yes.

ACTING CHAIRMAN HORN. That is roughly one-eighth of the Indians in the United States are Navajo and they are on the Navajo Reservation. So we are talking about one-eighth of the American Indians getting, maybe, one-tenth of the money, the way it works out, since they are getting about half of the 5 million, and that 5 million is a fifth of the 25 million.

Now, let me get at the allocation process. You say there has been no conscious decision made by EDA at a national level to say that, "American Indians should get so much of our total budget. It just happens that way."

MR. LUKE. Not to my knowledge.

ACTING CHAIRMAN HORN. Okay. What is the EDA total budget nationally, on a typical fiscal year recently?

MR. LUKE. Roughly $160 million for public works. Or it is approximately $420 million, totally. But this fiscal year it was reduced by the President to approximately $200 million.

So we have had to curtail and reduce some of our programs. We did not, however, reduce the yearly total to the Indian reservations. By that, I mean, historically, we have spent approximately $25 million and we will continue to fund at that level this year.

ACTING CHAIRMAN HORN. When you consider need in a budget allocation, as budgets are built from requests coming in from States and regions of EDA around the country, you mentioned that per capita doesn't count that much. What does count? Is it relative estimate of need?

MR. LUKE. Yes, sir. I would say that has a big bearing on it. It is the severity of the situation.

I agree that the reservations certainly are among the most severely economically deprived areas in the United States. But, I'm sorry, I don't control the allocations.

ACTING CHAIRMAN HORN. Well, I understand that. And I realize you could make a very good case in Arizona.

And, unfortunately, political pressures in other parts of the country, including urban America where they could afford some of these projects if they taxed themselves for it, sort of sometimes puts aside very real and legitimate needs in a vast region such as the Navajo Reservation.

To your knowledge—you mention the BIA clearance or letter of support that is encouraged—has the Bureau of Indian Affairs ever not supported a project that has come from the Navajo Reservation, to your knowledge?

MR. LUKE. Not to my knowledge, no, sir.

ACTING CHAIRMAN HORN. One last question on my part.

In this economic development plan which you are requiring, to what extent does EDA look into other than the physical aspects of economic development and the relative need? For example, I mentioned, this morning in a discussion with Chairman MacDonald, the well-known fact in dealing with underdeveloped countries that, unless there is some stabilization or growth controls on population, often your rapidly increasing population can really eat up any economic investment that one makes. And I wondered, does EDA consider population factors in looking at these plans?

MR. LUKE. Yes, sir. We, as a matter of fact, use census data to determine the severity of certain areas, not necessarily on the reservation but—because we have given the reservations 100 percent funding which we have yet to do in other non-Indian areas. And so, as a budget item, you might say, the 100 percent grant to the Indian reservations comes out of the—well, we just don't take the population into consideration because we already give the tribes 100 percent grant.

ACTING CHAIRMAN HORN. Well, I'm trying to get at, to what extent does the Economic Development Administration, have they even thought of some planning in terms of population in relation to economic development, or is this just beyond their realm of thinking? Otherwise, economic development will never really catch up with needs of a group.

MR. LUKE. Well, sir, I'm sorry, I can't speak to the philosophy of the agency because I'm—but I'm sure that they are taking all of these things into consideration, considering the fact that we are, you might say, a lame duck agency.

ACTING CHAIRMAN HORN. Yes.

One of the concerns would be that right now, as I said this morning, we know who will be working on the Navajo Reservation 18 years from now because those individuals are already born and it's just a matter, if you are trying to phase physical development in relation to economic development, we ought to be able to take into account that population demand 18 years from now just looking at the current birth data, and I wondered to what extent you at the State level do that.

MR. LUKE. I agree, except that you have still got something like 16 million acres to cover 135,000 at a growing rate and since they aren't totally community dwellers it really isn't possible for an agency of our small size to do much in the outlying areas of the reservation. So we do concentrate on the employment centers, but here again, we do these things only at the request of the tribe, as I say. They have a priority list, and we work from that list to develop these things.

ACTING CHAIRMAN HORN. Thank you.

Commissioner Rankin?

COMMISSIONER RANKIN. I have very few questions.

One thing that's rather sad, isn't it, as your amount of money available to you decreases and inflation goes up, why your influence becomes really less and less each year, doesn't it?

MR. LUKE. Yes, sir, it does. We have a great deal of overruns on our projects simply because of the rising cost of inflation, and the overrun money comes out of the same pocket, so we're able to develop less new projects and have to take care of the older ones which are in this overrun category.

COMMISSIONER RANKIN. Now, you mentioned the criteria of the way you distribute the money. You say it's not per capita; it's based on need; it's based on the adequacy of the funds. Would you say that enters in—

Mr. Luke. Yes, that's—

Commissioner Rankin. Are there any other criteria which you take into consideration? But you really don't have to pass on these things, do you? You have so many requests, you can just say, "We don't have enough money to go around." Isn't that it?

Mr. Luke. Yes, sir. We have over 1,000 redevelopment areas throughout the United States.

Commissioner Rankin. And so you really don't have to examine them too closely, do you? The money is so short that you can just say, "We just don't have enough money"?

Mr. Luke. Yes sir, that essentially is the problem.

Commissioner Rankin. Do you prefer water systems to sewage systems or does it go about half and half?

Mr. Luke. Well, there's been an overlap there, and I think that that's been one of the things that has been recognized in the Federal Government is that there is some duplication and overlap. Consequently, we are out of the sewer business now. We have in the past worked with Environmental Protection Agency in providing treatment facilities and sewage facilities, particularly the collection systems, but we are now turning that more and more to the EPA and the State.

Commissioner Rankin. One last question.

Has the Navajo nation been as successful or more successful than others in getting grants from your agency?

Mr. Luke. Well, sir, they've obtained better than 50 percent of our agency funds, yes, sir.

Commissioner Rankin. How much better?

Mr. Luke. Oh, about, let's see, I think the ratio is something like $24 million or $20 million as opposed to the other reservations.

Commissioner Rankin. I see. Thank you very much.

Mr. Luke. That's within the State of Arizona, by the way.

Acting Chairman Horn. Commissioner Freeman?

Commissioner Freeman. Mr. Luke, you refer to the fact that your agency is a lame duck agency?

Mr. Luke. Yes, ma'am.

Commissioner Freeman. It's too bad we can't deal with lame duck problems. The problems are going to be with us. What is going to happen to the programs? Where will they go?

Mr. Luke. Well, I wish I could answer that, ma'am. Just as a personal opinion, I am—well, I'm aware of that, there's the Bellman amendment to our recent legislation which requires a study be done of the economic development and other forms of delivery. I am satisfied that the Congress will come up with some means of doing it. However, if they don't, it will probably revert to the Bureau of Indian Affairs for an economic development program of theirs.

Commissioner Freeman. As an economic development representative, have you ever been called upon to make a report of the programs or your activities in this area?

MR. LUKE. No, ma'am, I have not reported to the tribe on—if you are speaking—

COMMISSIONER FREEMAN. No, no, I don't mean to the tribe; I mean to the EDA.

MR. LUKE. Well, yes, ma'am, we prepare reports of activities, but ordinarily these are prepared at our regional office because there are certain postapproval activities that are—such as overrun monies that we are not privileged to. These functions are taken care of by our technical support division out of our regional office. So the figures would be inaccurate for me to put down a project list with the funding that we have spent and then have our regional office say we spent an additional $300,000 or something on a project as an overrun.

COMMISSIONER FREEMAN. Have you ever been asked for an opinion with respect to the needs as the representative in this area; have you been asked for an opinion?

MR. LUKE. Yes, ma'am, and I have those documents, I think, with me also.

COMMISSIONER FREEMAN. What is your opinion as to the needs in this area?

MR. LUKE. For the Navajo Reservation or all reservations?

COMMISSIONER FREEMAN. For the Navajo Reservation. How much money is needed?

MR. LUKE. Well, I'm sorry, I really can't answer that just off the top of my head.

COMMISSIONER FREEMAN. When you were asked for an opinion and you said you gave an opinion as to the needs, what did you identify as the needs?

MR. LUKE. Well, I simply identified the types of things that I thought our agency ought to be looking at.

COMMISSIONER FREEMAN. Could you give us an example of those?

MR. LUKE. Well, tourism projects, for instance, are very big on the reservation. They've got a number of historical and tourist attractions that are available that could be developed commercially.

COMMISSIONER FREEMAN. Would not an effective tourism project have to have an infrastructure such as roads and water?

MR. LUKE. Yes, ma'am.

COMMISSIONER FREEMAN. And plumbing?

MR. LUKE. Yes, ma'am.

COMMISSIONER FREEMAN. Did your recommendation contemplate EDA funding of such?

MR. LUKE. Yes, ma'am.

COMMISSIONER FREEMAN. Did you give an estimate of the cost of that?

MR. LUKE. No, ma'am. That is not my job. I am not an engineer.

COMMISSIONER FREEMAN. Was there any response to the recommendation which you made?

MR. LUKE. No, ma'am, it was done simply as a regionwide study of the types of things that we felt we ought to be doing. It was called regional development strategy, economic development strategy. It was done for our Washington office.

COMMISSIONER FREEMAN. Do you have an opinion whether $25 million is adequate or not?

MR. LUKE. No, ma'am, it certainly isn't.

COMMISSIONER FREEMAN. It is not adequate?

MR. LUKE. No, ma'am.

COMMISSIONER FREEMAN. Would it be a good guess if I said that in my opinion it should be probably four or five times that much?

MR. LUKE. Yes, ma'am.

COMMISSIONER FREEMAN. Would you consider making such a recommendation to EDA?

MR. LUKE. I would consider it. I doubt very seriously if it would count for anything, but I'd certainly like to see some additional funds, particularly for the Indian reservations because traditionally they are the most economically lagging, and in just taking a look at the 10 Navajo projects that I have here in front of me on the current priority list I can see several times the amount that we will be spending here this year.

COMMISSIONER FREEMAN. Well, I would go back to my earlier question, with your recommendations, could you not consider including a recommendation for additional funding, giving it a fiscal note, so that the Congress and the agency might not have to say, "Well, the only reason we have kept it at $25 million over the past several years is that our people never asked for anymore money"?

MR. LUKE. By "our people," ma'am, who do you mean?

COMMISSIONER FREEMAN. Meaning the employees of EDA.

MR. LUKE. Well, I'm sorry, but I don't think I'd have that kind of input to our agency. I could make the recommendation, certainly and I believe we are all in accord that additional funds certainly would be nice. But here again I'm forced with the same restraints that anybody else is that works with the Government is, the money that the President makes available through the Office of Management and Budget.

ACTING CHAIRMAN HORN. Could we get one point here just for the record? The constraints on you by your agency in building your budget, are you given a figure by the regional office of the Washington office of EDA as to the total amount that you can probably ask for for a forthcoming fiscal year?

MR. LUKE. Yes, sir.

ACTING CHAIRMAN HORN. Okay. So you don't really have the leverage or the leeway to say, "Look, it's got to be more than $5 million. The real need here is $50 million, $100 million or $200 million." You are given a budget figure?

MR. LUKE. Yes, sir.

ACTING CHAIRMAN HORN. And so, therefore, the problem that Mrs. Freeman raises as to where you pin the decision is really in Washington, D. C., I would take it, on where the basic format of that budget is outlined a year or so before the fiscal year begins as you begin to build a budget from the field. And I take it that if it's typical of any other public agency, if you, say, sent in $200 million worth of proposals, the result would be that they would either laugh you out of court, or they would pick and choose among your projects which might not necessarily be the most needed projects for the $5 million? Am I wrong or right?

MR. LUKE. That is exactly what happened this last go-around. They asked us for our input as to the number of projects. We developed what we called a profile of the project, including the estimated amount of each project. I had 18 projects for Arizona developed within a very short time frame because you've got to understand that we were already given RIF [reduction in force] notices; we were going out of business as an agency. We told all the reservations to forget coming to EDA, that we were out of business as of this year, so consequently, everybody dropped EDA and then, bang, at the last minute we got a reprieve, so we were back in business and in a very short notice we developed, as I say, 18 projects that I presented to our regional staff and of course, the total for that amount was $13.6 million, and I was laughed out of court, so to speak.

That is essentially what happened.

ACTING CHAIRMAN HORN. Mrs. Freeman, you can go ahead.

COMMISSIONER FREEMAN. Well, I still want to know where—at what point can we get some idea about what a project will cost and from whom will somebody in Washington accept a recommendation? Do you have any idea about that?

MR. LUKE. Well, here again, we request this information from the reservations themselves. I personally do not try to influence their thinking on any types of projects. In other words, they know their land infinitely better than I do and know their needs, and I depend on them to tell me the types of projects they wish.

They do this by, again, the priority list that they establish, and we attempt to work from there. Now, in working up these priority lists sooner or later we develop a profile on them and that profile contains the amount of money that the project is likely to cost. It's subject to change, of course.

COMMISSIONER FREEMAN. And you're saying that the Navajo Tribe itself determines what it needs?

MR. LUKE. Yes, ma'am.

COMMISSIONER FREEMAN. It determines its priorities?

MR. LUKE. Yes, ma'am.

COMMISSIONER FREEMAN. It determines the estimated costs of those needs?

MR. LUKE. Well, it employs engineers and professional people to do that, yes, ma'am.

COMMISSIONER FREEMAN. And then all you do is you sort of act as the conduit of their requests?

MR. LUKE. Yes, ma'am. Of course, obviously, if they get out of our program range, such as housing and things like that which we don't take care of, then we have to counsel with them and make sure that they do the economic development types of activities or projects, and then it's my job to help them put them together in acceptable form and submit them to the agency as projects.

COMMISSIONER FREEMAN. Thank you.

ACTING CHAIRMAN HORN. Mr. Ruiz?

COMMISSIONER RUIZ. I don't think I can develop this much further. Apparently as I observed, there seems to be a lack of muscle before management and budget because we go right back to the tribes themselves to their needs. If you are simply a conduit, and from what you said, what you have just stated on the stand, you yourself as a person do not have too much to say about it, there's something lacking inbetween. Could you give us an educated guess as to just exactly what that person, that committee, that somebody, could possibly be?

MR. LUKE. Well, it's what we call a project review committee. They review all of the projects that are submitted by all of the areas. For instance, in our Seattle regional office they cover 10 States and I would venture to guess probably 40 or 50, maybe even 100 redevelopment areas, including the 19 reservations here in Arizona.

COMMISSIONER RUIZ. Who selects this project review committee?

MR. LUKE. The regional director, and it's made up of the chiefs of the various staffs.

COMMISSIONER RUIZ. And who is the regional director?

MR. LUKE. Mr. C. Mark Smith.

COMMISSIONER RUIZ. Is he a witness, Mr. Counsel?

MR. GLICK. No, sir, he is not.

COMMISSIONER RUIZ. Thank you.

ACTING CHAIRMAN HORN. Mr. Buggs?

MR. BUGGS. Mr. Luke, has the Department of Commerce escaped the responsibility imposed on most other Federal departments for drastic decentralization of authority?

MR. LUKE. Well, they are working on it; but, here again, they started working on it, I think, a year ago before they found out that they would not be in business this last fiscal year, and they have moved some Washington personnel out into the field and of course our staff of less than 600—well, about 600 people is certainly not a very big agency, so we are not really that centralized.

MR. BUGGS. What I am trying to get at really is where is the decision with reference to the amount of funds allocated to you? Where is that decision made?

MR. LUKE. That's done in Washington.

MR. BUGGS. It's not made in Seattle?

MR. LUKE. Well, Seattle—the project review committee picks the projects on the basis of their merit.

MR. BUGGS. But does Mr. C. Mark Smith make a determination, out of the lump sum of money that is allocated to this region by Washington, what it is that you will get?

MR. LUKE. Yes, sir.

MR. BUGGS. So if there's any roadblock to what you would like to see happen in this area, so far as getting information to Washington, it would be at the Seattle regional office?

MR. LUKE. Well—

MR. BUGGS. It won't get past him if you really— If you wanted something to get to Washington, you'd have to depend on Mr. Smith to see that it gets there?

MR. LUKE. Reasonably so, yes, sir. In other words, he's the final authority, but we work through the various committees to develop the projects, and they rule on their merits and whether or not we can do them and given the money that we have got to spend, what we can do.

MR. BUGGS. But it isn't necessarily OMB in Washington that specifically determines how much money is at your disposal?

MR. LUKE. Not at my personal disposal, no, sir. The agency disposal. And then the agency allocates to its various regions.

MR. BUGGS. And then the region allocates to you?

MR. LUKE. Yes, sir, based on the projects that I have developed.

MR. BUGGS. That's all, Mr. Chairman.

ACTING CHAIRMAN HORN. Do you have any knowledge as to what extent regional directors can argue with the national office of EDA to change the proportion of funds that they have available to them from fiscal year to fiscal year?

MR. LUKE. I am aware that they all argue that point, sir. But I am not aware of the results.

ACTING CHAIRMAN HORN. Let me ask you, has EDA ever done a 10-year inventory of, say, the national needs, building it from State to region to Nation in the areas of jurisdiction for which it's responsible? Have we ever just said, how many sewer systems do we need to get this country into the twentieth century, how many of this or that?

MR. LUKE. If they have, sir, I am not aware of it.

ACTING CHAIRMAN HORN. In other words, we're doing things on a year-to-year piecemeal basis, and we are not thinking ahead as to what this Nation needs in 1980 or 1990 and then how we phase toward achieving that goal?

MR. LUKE. Unfortunately that's the nature of the agency, sir. When you're given the Presidential veto, why we don't make any hard and fast plans for 1980.

ACTING CHAIRMAN HORN. Well, but EDA existed since the mid-sixties, long before any Presidential veto. What shocks me is that for 7 years, unless I am corrected, they built no national inventory, but rather they ran from pillar to post putting out fires. As commendable as it might be what they did in the 7 years, I guess my query is, why didn't they start out saying, what is the demand in this Nation for physical facilities?

MR. LUKE. I am not sure that they haven't done that, sir.

ACTING CHAIRMAN HORN. But you are not aware of it?

MR. LUKE. I am not aware of it, no, sir.

ACTING CHAIRMAN HORN. Well, if you are not aware of it as State director I think it's probably pretty hard for Members of Congress or the rest of us to be aware of it because they would have had to build that inventory if it made sense from the State to the region to the Nation.

Mr. Glick, any further questions?

MR. GLICK. No, sir, I have none.

ACTING CHAIRMAN HORN. Thank you very much. I think this has been a very informative session, and we've all learned a little bit about Washington-field relationships, something we have a problem with in our own Commission, Mr. Luke. Thank you.

The next two witnesses will be a panel of experts on economic development consisting of Dr. David Aberle and Mr. William Miller. If Dr. Aberle and Mr. Miller will come forward we will swear them as witnesses.

[Dr. David Aberle and Mr. William P. Miller were sworn and testified as follows.]

TESTIMONY OF DR. DAVID ABERLE, PROFESSOR, UNIVERSITY OF BRITISH COLUMBIA, AND MR. WILLIAM P. MILLER, BUREAU OF INDIAN AFFAIRS, WASHINGTON, D.C.

ACTING CHAIRMAN HORN. Please be seated.

Mr. Glick.

MR. GLICK. Thank you, Mr. Chairman.

May I ask each of you gentlemen, beginning with Mr. Miller, to state your name, address, and occupation for the record, please.

MR. MILLER. My name is William P. Miller. I'm the intergovernmental relations officer for economic development, Bureau of Indian Affairs. I live at 4802 River Road, Bethesda, Maryland.

MR. GLICK. Thank you.

Dr. Aberle?

DR. ABERLE. My name is David Aberle. I am a professor of anthropology at the University of British Columbia in Vancouver, British Columbia.

MR. GLICK. Dr. Aberle, excuse me, could you move in a little closer to the microphone?

DR. ABERLE. I am a U. S. citizen. I reside at 4518 Marine Drive, West Vancouver, British Columbia.

MR. GLICK. Thank you.

Mr. Miller, could you clarify, please, for the record, your assignment here on the Navajo [Reservation] in Window Rock?

MR. MILLER. Yes, Mr. Glick.

My assignment here to the Navajo Tribe on detail from the Washington office of the Bureau of Indian Affairs, out of the Office of Tribal Resources Development, has been brought about by a specific request from the chairman of the Navajo Tribal Council on June 28th of this year to, specifically, work directly with the tribe in order to attempt to identify some of the problems that are facing the Navajo Nation in developing its economy. That detail is specifically as I stated to the tribe as requested by the BIA area office.

MR. GLICK. Thank you.

Now, I'd like to ask each of you to describe briefly your previous experience or your experience professionally in the area of economic development or in the study of developing areas.

Mr. Miller?

MR. MILLER. Just briefly, in 1955 I was a contract employee with the Department of State under the American specialist program. I was first assigned to the Republic of Indonesia in 1955. Later I went to the Republic of Burma in that same year, and this was a grant. At that time I was the assistant track and field coach at Arizona State University and was pursuing a master's degree in behavioral sciences.

That assignment evidently sparked some of the leaders of the developing countries of Southeast Asia to the need of developing national programs for youth vis-a-vis their efforts to move from a dependent country formerly dominated by a colonial power to an independent country.

That initial grant of 6 months to Indonesia and Burma lasted approximately 13½ years, spending most of the time in the developing nations of Southeast Asia in the area primarily of youth development. That's all areas connected with youth development, including economics.

I returned to the United States from the Southeast Asia area in the latter part of 1967 and worked briefly with the Agency for International Development. Then I went with the Office of Economic Opportunity as a senior analyst for training and technical assistance division, where I stayed for 2 years, first as the senior analyst and then the planning officer, nationwide, for the delivery of technical assistance services to community action agencies. Then at the request of Dr. Jim Wilson, who was then the deputy director of the Indian division of OEO, I became the senior analyst on his staff, and later deputy director of that division and just prior, 1 year prior to going to the Bureau of Indian Affairs, from 1969 to '70 I was in charge of what was called the development branch, which was responsible for implementing the President's message on self-determination delivered on July 8, 1970, in an experimental capacity, providing grants specifically to tribes to move toward taking over programs which were administered by Federal Government agencies and also experimenting with what was referred to as the model urban Indian center project. In 1972 I went with the Bureau in my present capacity.

MR. GLICK. Thank you.

Dr. Aberle, would you please tell us about your long experience, particularly with respect to your work here on the Navajo Reservation?

DR. ABERLE. Well, that work began back in 1940 when I was an undergraduate. I am an anthropologist. But my interest in the Navajo economic situation began in the period 1949 through '53. During those years I was engaged in a study of the Native American Church, sometimes called the peyote religion, on the Navajo Reservation.

In the course of that study I found that a great many people wanted to talk to me about livestock production on the Navajo Reservation and as a result of that I prepared in my book, *The Peyote Religion Among the Navajos*, what is still the most extensive history of livestock production on the Navajo Reservation. And I also began to become interested in surveying the economic condition of Navajos and did random samples, very small ones in a couple of communities, dealing with employment, employment history, dependency on livestock, and so on.

Then, beginning in 1965, I became interested in the question of why it was that Navajo traditional kinship seemed to be surviving in quite handsome style in spite of the fact that Navajos were increasingly involved in a cash economy, which in theory is supposed to break down such traditional systems into independent nuclear families. And I began a research, still incomplete, on Navajo kinship in the contemporary economy.

In the course of that I found that work at the local level was insufficient for my needs and that I had to develop a picture of the overall economic situation of Navajos and the economic pressures to which they were subjected and began to collect information on this.

In 1968 the Joint Committee on Economy in Government, which was then preparing a volume on plans and problems of American Indian economic development, asked me to prepare a paper on a plan for Navajo economic development.

MR. GLICK. Dr. Aberle, could I interrupt to ask, is this paper entitled "Plan for Navajo Economic Development," which was submitted to the Joint Economic Committee of the Congress, of the 91st Congress? Is this the document that I have?

DR. ABERLE. Yes.

MR. GLICK. Mr. Chairman, may I have permission to introduce this into the record?

ACTING CHAIRMAN HORN. It will be introduced as Exhibit 9.

MR. GLICK. Thank you.

[The document referred to was marked Exhibit No. 9 for identification and received in evidence.]

MR. GLICK. Please continue.

DR. ABERLE. I prepared that report in which I emphasized that any plan for Navajo economic development would not in fact be developed by an anthropologist or outside expert of any sort, if it was to be effective, but would be developed by Navajos and for Navajos; and then, subsequently, I was asked to prepare an article for the forthcoming Handbook of North American Indians to be published by the Smithsonian Institute. The name "Handbook" is a misnomer, since it will run to 20 or 25 volumes. And in pursuit of preparing that article, last summer I was able to visit Window Rock and Farmington and through the cooperation of Mr. Hanagarne and many others was able to gather more up-to-date information on the contemporary Navajo economic scene.

So that is my experience then. It's local in terms of living with and talking to Navajos about how they are coping with their present problems, and it is overall in the sense of collecting data on the total Navajo economic scene which is obviously too large a task for a single investigator, but I am trying to put it in some kind of qualitative and structural perspective.

MR. GLICK. In your recent work, Dr. Aberle, or did your recent work suggest any changes in the conclusions that you came to in your 1969 study?

DR. ABERLE. Could I ask your indulgence to preface that with something else?

MR. GLICK. Certainly.

DR. ABERLE. So far we have been talking today about economic development, but nobody has talked about what economic development is. Could I address myself to that very briefly?

MR. GLICK. Yes. We were getting to that soon.

DR. ABERLE. If you were getting to that soon then I will withdraw that.

MR. GLICK. No, please proceed as you wish.

DR. ABERLE. I think that it's exceedingly easy to think of economic development for the Navajo Reservation as involving simply a larger gross product or simply more employment. It seems to me that a rounded and decent development for an area of this size and this many people involves far more than that—but it is not simply a question of how the reservation can most profitably be milked by outside interests of its rich mineral resources, but it involves questions of a development for Navajos and not for the sake of the energy crisis. It involves Navajo control and Navajo planning and that it involves more than bureaucratic planning at the tribal level, that it involves maximum feasible participation and control of their own economic faiths by Navajos and that it involves Navajo participation in the economy in roles in addition to those of wage worker, such as technical and managerial and professional. Finally, that it demands some attention to the kind of life that emerges from the economic plans and the kind of land that is left after you have exploited these resources.

Now, could—I have forgotten the question in that—

MR. GLICK. Thank you.

DR. ABERLE. The question was whether I had changed my opinion—

MR. GLICK. Yes.

DR. ABERLE. Yes, to this degree: In the plan for economic development, my overwhelming argument was for Navajo control of Navajo resources and of Navajo economic planning. What I have seen as a result of my conversations here is that that is not going to be economically feasible without tremendous Federal capitalization, but at present the Navajos are caught in a vise where if they forego opportunities for, for example, immediate mineral exploitation, they forego the chance for immediate tribal income. Yet they must have this tribal income to run what they have to run at present because of general underdevelopment which is a welfare economy, and that it is not enough to make the political plea that Navajos should have the power to do this but is necessary to make the economic plea for not merely the development of the infrastructure, which I did go on about at some length in my report in 1969, but I did mention this in '69—I now see much more urgently the need for capitalization by the Federal Government.

MR. GLICK. Thank you.

In our previous discussions we understand that both of you gentlemen, Mr. Miller and Dr. Aberle, have characterized the Navajo as, and very much similar to, an underdeveloped nation, although it is a part of, and inside, the United States. I wonder whether both of you, perhaps Mr. Miller first, would elaborate on this characterization of the Navajo as an underdeveloped nation. How does this appear to you?

MR. MILLER. I think that characterization of the situation vis-a-vis the Navajo's relationship to the Federal Government is exactly correct. I think if we recall our history at the time of European expansionism of Europeans coming to America, in fact, seeking new land, to conquer new soils, and dominate new people. The period from 1500 to the 1800's was a period of war and conflict with Native Americans. The treaties were a result of this conflict and the land was set aside with specific treaty obligations on the part of the conquerors to the natives of the country, and as a matter of fact, were—the Indian nations—treated as foreign nations.

The remaining native American tribes have a cultural identity; they have a land mass, and they have a community which is held usually in most cases commonly, which is very similar to the developing nations in Asia, Africa, and Latin America. Its sovereignity is limited relative to those treaties and under the dominance of and power of the United States. However, I think if we look accurately at these relationships and these treaties with the Indian tribes and especially the Navajo, are more like a commonwealth arrangement or more like a territory than they are, what they are now treated as.

Reflecting on what Mr. Todacheene said, one has to agree wholeheartedly that there has been some infringement and encroachments of the semisovereign rights of the Navajo in terms of its territorial integrity and its authority, especially after 1924 wnen Indians became citizens, for the right of citizens to form governments and to exercise the power of a government. And I think that there is no question, at least in my mind, that there have been encroachments, civil rights encroachments, upon the Navajo people in terms of the way in which the administration of national Indian affairs policy has been conducted over the last 140 years.

In that regard I think the developing Indian reservations are indeed very much like a developing nation, and we should not, I think, talk about programs, but we should talk about aid.

MR. GLICK. Well, would you attribute the underdeveloped economic state, particularly of the Navajo Reservation, to the political problem which you have just described?

MR. MILLER. I think the difficulties which the Navajo people as a semisovereign entity within the greater sovereign power of the United States is not a question of technology; it's not a question of how the policies are administered; it's not managerial in nature; they are political in nature. And I think until the political issues surrounding the status of the Navajo nation as a legal, legitimate government entity within, as I have mentioned, the overall soverign power of the United States is settled in terms of jurisdication, the land which is now in part in New Mexico, Utah, Colorado, and Arizona—unless those questions of jurisdiction and power, political power are settled, in my own judgment, relative to some more than 13 years of experience in a developing world, deeply involved in the international aspects of that, I see little that can be done in terms of economic development mainly because, historically, a people do not really develop until they control the decisionmaking authority of their government, until they control the means of creating the infrastructure which is necessary for the development of an economic base. And all of the funds primarily that go into the Navajo presently, go out of it because they do not control the infrastructure, the institutions for development, financial institutions, trade and commerce, et cetera.

MR. GLICK. Dr. Aberle, I would like, if you want or choose to, for you to comment on Mr. Miller's description of what he sees here, but in addition, I think that having characterized the Navajo as an underdeveloped nation, or something in those words, I think you have tied it to overdevelopment and the exterior of the boundaries of the reservation. Now, I wonder if you can give us some information on that view.

DR. ABERLE. I will try to.

I would like to pick up on the colonial theme. I prefer the word colony to underdeveloped nation for present purposes. I will mention, but not elaborate on points that have already been mentioned and will perhaps elaborate on some that weren't.

What infrastructure there is, as in a colony, is oriented, has been oriented until recently to the benefit of administrators and corporations. That is, if there are roads, they are to get to Window Rock and Tuba City or to a mine. It's a very fine road to the mine, but there is a very bad road out of the mine going south.

What development is allowed must be noncompetitive with outside interests or be done by those interests. It's a characteristic way of dealing with colonial and neocolonial situations. The orientation has been assimilative. The external authority knows how Navajos ought to live. The style of operation is directive, cooptative, paternalistic, and I would say thereby racist. There is a stifling of initiative. There is tremendous intelligence, energy, and motivation here in the Navajo country that gets no chance for expression.

There is the characteristic draining off of profit. There is no taxing power in the government. Major concessions are made to developing firms either by the Federal Government or by the tribal government which must, as I have said, sacrifice everything else to immediate income and finally, the government is treated in the style which I recognize from having been on the student council of my high school: if you don't know what you want to do and you ask the authorities for advice, they tell you that after all, you are in charge; but, if you know what you want to do, they tell you you can't do it.

Now, as to overdevelopment and underdevelopment, the point is that the capital that could be generated is instead drained off. It is drained off in 100 ways. It is not that the Navajos are lagging behind. It is that the Navajos are being kept behind. And the devices are multiple.

In the first place, it is outside interests who manage to pay royalties and still make a profit—and a handsome profit, to judge by the dividends of oil companies and coal companies. None of those profits remain here. There is the drainoff that results from the fact that Navajo dollars earned on reservation are spent off-reservation and there is no multiplier effect. There is the drainoff that results from the lack of opportunity to tax, and there is the drainoff that comes from 100 ways of providing hidden and overt subsidies to business firms that operate on the reservation but no sufficient direct subsidy to the tribe to provide oil depletion allowance and training programs and preferential Government contracts to firms settling on the reservation is an activity that is considered to be supportive of free private enterprise.

If the dollar value of that were calculated and applied to the reservation, it would be called either relief or socialism. So that what is happening is that by neglect which costs the people of the United States and the Government of the United States less, and by profit taking, the United States is being enriched, and the reservation is being impoverished and that is the relationship between overdevelopment and underdevelopment.

And one last point, I agree— I would rephrase Mr. Miller's position somewhat. He says that the problem is political. I think that it is a problem of power. Power is not merely politics, and I think that underlying the problem of power is the problem of economic interest, that oil companies do not like to share profits with Navajo Tribe, that reservation towns do not like to see parallel business development on the reservation, that whenever there is a choice between a settlement that could be made on the reservation and could be made in Farmington, Gallup, Flagstaff, or Winslow, the choice will be made in favor of the border communities. And that, in other words, whenever it is a question of Navajo interest and other interests the choice goes in favor of other interests.

MR. GLICK. Thank you, Dr. Aberle.

Mr. Miller, in the work that you've done out here so far, have you been able to determine the origin and the amount of funds that flow into the reservation and then can you tell us what happens to those funds? That is, I'm thinking both in terms of Federal funds and in terms of the earnings that are brought back onto the reservation from outside.

MR. MILLER. This is an extremely important question, Mr. Glick. I cannot give you any accurate definitive answer to that question at this time because there is no available data such as this anywhere in existence.

One of the things which the chairman asked me 2 weeks ago was to try to identify by function and objective all Federal Government assistance programs operative on the Navajo. I've been able to get some approximate gross figures and they are in the realm of approximately $200 million.

I have gone to the Bureau last week, to the Office of Management and Budget, and to San Francisco, the Western Regional Council, which is responsible as an intergovernmental entity now for the overall coordination of program assistance to the Navajos and all other Indian reservations in Arizona, California, and Nevada. They do not have the data.

At this particular time I have one of my tasks, Mr. Chairman, is to try to get this data.

MR. GLICK. I was hoping, and I'm sure you can give some suggestions as to what happens to this money that comes into the reservation.

MR. MILLER. I think I can comment in approximate ways what happens.

In terms of the Bureau of Indian Affairs' funding assistance to the Navajo, it is approximately $115,000 specifically for commerce and industry, which is absorbed primarily by staff people, travel, and fringe benefits. You've already heard that the EDA, overall, since they have been operating on the Navajo, is about $25 million.

The credit and finance, I believe—and I would check with the representatives of the area office on this figure—is less than $5 million in terms of providing loans to small businesses. The total budget for the Bureau in this area is $25 million. It would be more than that if the Indian Finance Act is passed. I think it may be in the process of passing. But you can see that, if we consider that over the last 100 years—and we will be getting this kind of information, but it's very important and it runs into the billions of dollars--Federal Government assistance to the Navajo over the last hundred years into billions of dollars, very, very little has gone specifically for the development of the Navajo economy.

That's probably one of policy in terms of past efforts to contain and try to get the Indians to move off the reservations, to try to break up the communal holdings of reservations, et cetera, but there has been no significant effort in the history of Federal Indian affairs policy to systematically plan and provide the necessary capitalization for both resource and human development meshed with the tribe's own resources. And I think that's essentially one of the major factors in the Navajo not having the capitalization.

They have a budget. Their revenue is about $16.9 million. All of that goes for the operating of the day-to-day affairs of the tribe, only less than 4 percent is for investment capital. We have no investment capital, the Bureau of Indian Affairs on the Navajo.

The tribe lacks investment capital, and I concur 100 percent with what Dr. Aberle said on this subject, it is necessary relative to our tribe—rather, relative to the treaties, Federal

Government with the Navajo, to take care of these administrative costs and allow the tribe to use its revenue for investment development as opposed to administrative, just carrying on day-to-day administration.

MR. GLICK. Thank you.

Mr. Chairman, I have no further questions at this time, but I would like to reserve the right to come back later.

ACTING CHAIRMAN HORN. Commissioner Freeman?

COMMISSIONER FREEMAN. Mr. Miller, you have identified quite a number of the problems and indicated your belief that the decision required is political. I would like to know if you could identify in greater detail the resources for potential development and the recommendations, the specific recommendations which you would make along political lines to eliminate the various problems that you have identified.

MR. MILLER. I'd like to preface the answer to your question by concurring with the statement made by Dr. Aberle saying that the problem—he would not agree totally with what I said in terms of the problem is political—but it's one of power and it's power and political, and I certainly concur with that.

In answer to your question, what is the solution to these kinds of things that I have just identified; is that correct?

COMMISSIONER FREEMAN. Yes.

MR. MILLER. I would say that one of the first things that we should do, or the Federal Government should do, is to develop legislation which would recognize the semisovereign status of the Navajo nation as a legally constituted governmental entity under the greater sovereign power of the United States, and that in my judgment the legislation should include provisions for the Navajo nation to have all of the power which a State has.

COMMISSIONER FREEMAN. Mr. Miller, while we are waiting for the Congress to do that I would like to know if you would give an opinion. We've heard testimony concerning leases and contracts that have certain specific provisions with respect to Indian preference, and you've also referred to the lack of income or the inadequate income. Could you comment on the extent to which certain contracts that are now in force, certain leases that are now in force that may be being violated, to the extent to which you believe those could be terminated or the processes that should be instituted?

MR. MILLER. Yes. The rule of the Federal Government over the Navajo nation has already been very, I think, articulately identified, and this is done primarily through the Department of Interior and the Bureau of Indian Affairs. Now, I think that there are many, many people in the Bureau of Indian Affairs, Department of Interior, other bureaus related, who have the responsibility for various programs on the Navajo, who want to do something.

In my own analysis of the problem and the tribe's relationship to the Interior and the BIA, it's an institutional one. I believe that probably some of the—or the lack of inaction, the lack of the initiatives on the part of our colleagues in the Bureau of Indian Affairs to provide the necessary technical assistance, guidance and help for the tribe to run their own affairs is one of attitude and the fear of "If I do that, then I will not any longer have the power and prestige and control that I now have."

I think this is probably a human situation. However, this is a situation in my own opinion that has to be changed. We have presently operative on the Navajo, in my own analysis, two governments: one, the legally constituted tribal council, and the one which is referred to as the area office of the Bureau of Indian Affairs. Very little that the tribal council does in terms of decisions by resolution is not passed either through approval in resolution A, resolution type B or resolution type C, that it doesn't have to go through this approval procedure. The chairman has already commented on that. The general counsel for the tribe, Mr. Vlassis, has already commented on that, that the Bureau of Indian Affairs, in at least the general counsel's opinion, is assuming too much power that it does not in fact have.

So, it's true that the funds—which is approximately $110 to $130 million—the Bureau of Indian Affairs, with a staff of close to 5,000 or thereabouts—you have two tribal government identities. That's the problem. So in order to do with what we have without doing any legislation, I think, in my own judgment again, it's incumbent upon us in the Bureau to provide the necessary technical assistance to cut down some of the bureaucracy and red tape and provide the kinds of assistance that will enable the tribe to do things for themselves.

We have enough legislation for the tribe to take over programs which are now run by the Bureau and other Federal Government agencies, and I think we should move on that. I think that initially given the circumstances that we are in now is something that can be done immediately.

There is, I may add at this point—since the responsibility for coordination and cooperation on an interagency Federal Government level now rests with the Western Regional Council—there is a mechanism called the "annual arrangement" which the tribe could possibly negotiate with the Western Regional Council in order to have, either by program or entirely, all the funds. I would recommend specifically this in economic development, all economic development and related funds be pooled into one lead agency and long range, short range and long range planning occur on an interagency, integrated basis for the systematic development of the tremendous natural resources which the tribe has and also the human resources, those which need to be trained for economic development activities. That is something that can be done immediately.

COMMISSIONER FREEMAN. Thank you.

ACTING CHAIRMAN HORN. Commissioner Ruiz?

COMMISSIONER RUIZ. Yes, I will direct my inquiry to Dr. Aberle.

A person who can write a handbook containing 25 volumes has to be a realist.

DR. ABERLE. Correction. The handbook is going to contain 25 volumes. I will have two short articles in it.

COMMISSIONER RUIZ. Oh, I see.

Nevertheless, you have, I see, faced up to the issue here and unless I misunderstood you, it is rather frightening to me. The Navajo lifestyle you say is caught in a vise wherein capitalization is urgent and should not be bypassed at this time. If that be true, does this change your opinion, your expert opinion, as to the fundamental concept that the Navajo people should nevertheless remain in charge of its own fate, politically speaking?

DR. ABERLE. I'm glad you asked that because I don't think I made myself clear.

My point is that I am sympathetic with those people who are presently negotiating contracts which have the effect of signing away Navajo resources for decades to come because they are at present caught in this vise. If there could be adequate Federal capitalization, then we could avoid this particular problem and my view as to the desirability of Navajo control of Navajo economic development and Navajo resources is not altered at all.

COMMISSIONER RUIZ. Now, if there be no political solution, such as the solution proposed by Mr. Miller, and while we're waiting for Congress to act as suggested by Commissioner Freeman, and until such time as we get this massive infusion of capital, if you see the danger of the loss of this precious Navajo lifestyle, can you nevertheless foresee an accommodation of two conflicting cultures?

In view of the fierce independence of this tribe which you yourself indicated has resisted so much that it caused you to become interested in it in the first place, can you foresee nevertheless an accommodation of the two cultures, taking into consideration all of what you have been hearing here with respect to dominant and subservient political entities?

DR. ABERLE. Navajo resilience is very great. How long it can continue is something that I think that no one who is not a prophet can foresee.

I have not myself been talking about two lifestyles. You, I think, introduced that phrase. I think that the tribe is doing the best it can with what it has and that it will probably proceed on several fronts at once. You will have the individual family's efforts to cope—the individual extended family's efforts to cope by deploying part of its membership into part-time labor and work in subsistence economy, keeping part of it at home to haul wood and water and manage the livestock and send part of it out, the more educated part out, into 5-day a week, year-round employment.

You will have the development of local cooperatives. There will probably be some attention between that and tribal efforts to organize tribal enterprise that would cover some of the domain of some of those cooperatives. There will be efforts to bargain and in some regions for a share of the action in mineral development, and there will be invasion of the reservation by large scale outside industry, and things will go on as they are on all fronts as long as they can.

I can't give a better answer than that.

COMMISSIONER RUIZ. Thank you.

ACTING CHAIRMAN HORN. Commissioner Rankin.

COMMISSIONER RANKIN. Do I gather correctly, Professor, that Navajos are worse off today than they were 5 years ago, in your opinion?

DR. ABERLE. The answer to that would have to be couched in terms of relatives and absolutes.

COMMISSIONER RANKIN. That is correct. I understand.

DR. ABERLE. And if you put it in terms of absolutes, they are better off. There are more roads. There are more schools. There is more dollar income. Whether there is more real income, I would have to leave to somebody who could calculate the inflation rate. There are more visible consumer goods in the households with whom I have been acquainted with over that period of time.

If you ask whether the Navajo—the gap between Navajo standards and standards in the larger community is narrowing, the figures in the 10-year report say that they are not and have not been since 1950. And we had testimony just after lunch that says that that gap is widening.

Absolutely, there are more creature comforts.

Relatively, the gap is either the same or getting worse.

COMMISSIONER RANKIN. Now, I notice in your introductory remarks, you used the term "economic exploitation," rather than economic development, giving the impression to me that all outside capital coming into this territory here would be economic exploitation, using exploitation in two connotations in the worst sense. Is that right?

DR. ABERLE. Well, let me separate out the two senses. When I speak of exploitation of minerals, I am using this term very much as it is used in the business world. But it has additional overload because when they are gone, there ain't no more. They are being exploited at a rate and for purposes that have nothing to do with Navajo needs and have to do with an energy crisis, which is the creation of an affluent society, in part.

As to the other sense of exploitation, the fact is that Navajos are trading jobs on the reservation for profits off the reservation. And by my reading, that is exploitation.

COMMISSIONER RANKIN. All big business then exploits in your—

DR. ABERLE. I have not said that.

COMMISSIONER RANKIN. Well, you very nearly said that, haven't you?

DR. ABERLE. I would like to stick to the Navajo Reservation, if I may, and say that we have here an organic entity, a territorial entity, and that it is a question of inside and outside, and that the profits go outside; and that the jobs, to a limited extent, come inside.

COMMISSIONER RANKIN. But if a business risked its capital in a business, they take risk also, isn't that true?

DR. ABERLE. That is true, but I have not heard of any oil or coal companies going broke in recent years.

COMMISSIONER RANKIN. Well, have you lived in West Virginia? They have, in West Virginia.

DR. ABERLE. Well—

COMMISSIONER RANKIN. But not now, not recently, as the price of coal has gone up. I will go along with you on that but—

DR. ABERLE. I said "in recent years." I was quite careful about that.

COMMISSIONER RANKIN. —they had some very bad years. And we can have some bad years again, can't we?

DR. ABERLE. It doesn't look as if we are going to have bad years in the energy field—

COMMISSIONER RANKIN. I hope you're right.

DR. ABERLE. —until the energy is gone.

COMMISSIONER RANKIN. Well, maybe then, some day, the fact that the energy is not gone from the Indian reservation would put them in a very fine bargaining power. They might have something when it is gone everywhere else, and it becomes extremely valuable then if they could just hold off for awhile.

DR. ABERLE. If they could hold off for awhile. But I think they will be milked out in 35 years by present projections.

COMMISSIONER RANKIN. Now, your solution, in lieu of this, is money from the Federal Government, am I correct? Didn't you make that statement?

DR. ABERLE. I would like to—yes. I would like to—

COMMISSIONER RANKIN. You understand, too, that in 12 years at Washington, every agency that I have seen come there—the solution to every problem in that agency is "more Federal money."

You remember the modern Alice in Wonderland, they asked Alice, "What's the difference between budgets and midgets?" And she said, "It's very similar. Midgets get smaller every year and budgets get larger." Well, in Washington I have noticed every agency, including the Civil Rights Commission, each year, we request more money and we need more money. How long can we continue this way?

DR. ABERLE. I think—

COMMISSIONER RANKIN. I am looking at the overall picture. You started off with the overall picture.

DR. ABERLE. The overall picture is one where, by running the reservations—and here I will go well beyond the Navajo—as a relief population, then as their population increases and as the standard of living in the country, as a whole, goes up, indeed, these budgets go up year after year.

We are talking about the difference between running a relief economy and running a development economy. And, presumably, the result of some of these activities would be a local economy that was capable of supporting a much larger percentage of the population than is at present characteristic.

COMMISSIONER RANKIN. I hope so. Thank you very much.

ACTING CHAIRMAN HORN. Let me ask a few questions, getting back to Mr. Miller a minute. You have had a role in both formulating the 1970 message of the President, I judge, and in looking at some of the implementation of that 1970 message.

As perhaps you have heard this morning, the question was asked, realizing Congress is a partial stumbling block, nevertheless, there is an executive branch over which the President presides, and the Department of the Interior, the Bureau of Indian Affairs, among others, the question was asked, to what extent has the 1970 commitment of the President, away from the extremes of paternalism, which we went through, I feel, with the New Deal bureaucracy and termination which we went through with the Eisenhower bureaucracy, down to self-determination as pursued by Indians, both as individuals and tribes and their self-interest, to what extent is this policy being carried out by the employees of the executive branch, bureaucracy and political appointees who are responsible ultimately to the President? And what changes have you seen as a result of that message?

MR. MILLER. This is an extremely important question, Mr. Chairman. It is true that the President made a policy statement on national Indian affairs policy which, basically, stated that there be a policy of self-determination without termination of Federal Government assistance, and if the tribes wanted, they could begin to assume Federal Government programs which are now administered for them.

I think the events which occurred a little bit before November, through November 7, to take over the Bureau of Indian Affairs, the so-called Wounded Knee affair, where all manifestations of that policy, not being able to be implemented—a great deal of frustration on the part of all the tribal entities—not being able to, for a myriad of very complex reasons, related to lack of initiative, I would say, in my judgment and according to my own analysis and this is personal, failure on the part of the bureaucracy within the Bureau of Indian Affairs to respond specifically to that policy. That is from the Bureau of Indian Affairs' side.

I think the record also shows that although legislation, which many in the legal profession said was necessary to implement this policy, was not passed by Congress.

I think that we are facing a situation today—and this is related to your question—whereby our Indian youth, because of the developments all over the world relative to self-determination, has taken ahold of the minds of young people, and even older people, and they are beginning to have their effect on the thinking and on the acts of our Indian youth and also tribal leaders.

The kinds of things which exist in terms of the Federal Government not being able to implement such a policy since 1970 is indicative, in my opinion, of very serious critical issues to be faced by the Government in coming years.

They say that coming events cast their shadow before. Certainly, I have seen 2 years before what happened in Indonesia in 1968, worked with the youth from '55 to '62 before I left and went to Malaysia, saw the same kinds of things happening in Malaysia after they won, partially, their independence from Britain, and that there are certain indicators which would lead me to conclude that the time is now to settle these legal and jurisdictional problems related to self-determination.

The record, in summary, and specifically to answer your question, is not good.

We have Taos' Blue Lake. We have the Zuni, and there are very serious problems related to the Zuni tribe, for example, having certain kinds of authority over the Bureau of Indian Affairs employees which have not been settled. And we have other kinds of situations related to taking over programs which are constantly being blocked by past administrative policies, mainly at the local level.

I think the efforts of the former Commissioner and his staff, although, in my opinion, they could have been more professional, more well planned, as history has shown, were fruitless. And we are still trying to pick ourselves up and begin to move toward the same kinds of policies which are articulated today that were articulated in 1970. But, yet, we are not there, neither organizationally, administratively, or even in terms of providing the kind of professional, highly professional development aid assistance to the tribes on a well-planned and thought-out basis that is necessary for real development, economic development on the reservation.

ACTING CHAIRMAN HORN. Does this boil down to the fact that no bureaucracy likes to put itself out of business?

MR. MILLER. I think that is precisely correct. I think one of the difficulties which—I say this with all candor—that some of the officials of the area office have with my presence here relates to that. I think they are cognizant of my principles in terms of recording, observing, recording, and reporting facts as I see them without considering whether this is of benefit to the tribe or this is of benefit to the Bureau is bothersome.

And I think it relates to the kinds of experiences that I have had in this regard, that—and I say this is only human—I think it is the institution, and I think it is the system, and the people are trying to react to preserve the kinds of relationships they have had in the past, which happen to be in 1973, in America, irrelevant and unnecessary.

ACTING CHAIRMAN HORN. Well, I am glad to say in your battles with the area office, you are now protected under Title 18, U.S.C. 1505, because you have testified before the Commission, if that will help.

Let me continue on the political questions you raise that need to be solved. It seems to me— Let me give you some options here and see if you have got some more just to lay down the record.

In the case of the Navajo Reservation, one option, of course, is to see if the reservation could become a State in its own right, and all the constitutional process that this would involve, the placement then of two United States Senators, one member of the House of Representatives. That is one possibility.

Another possibility is to get a compact between the four States—largely, three; but perhaps four with the Four Corners area—that get some sort of commonwealth status, almost like the Commonwealth of Puerto Rico.

Another possibility is to take the suggestion of Chairman MacDonald this morning, and others, that all Federal allocation laws under various program authorizations should mention not only State and county as a unit of distribution but also Indian tribes. And they should be recognized as an entity, both because of constitutional, treaty, and other historic background on that.

Now, maybe one of those three options would—well, the first two might solve the problems of the Navajos. The third would solve the problems of all Indian tribes on all Indian reservations. But the first two would not, of course, solve the problems of other Indian tribes.

Do you have additional suggestions as to possible solutions to what you describe as the political question?

MR. MILLER. I think the three options which you have just outlined, Mr. Chairman, are three which could be pursued, which could be better than the present arrangement.

However, I would tend to opt for either the first or the second, that of statehood or commonwealth arrangement, relative to my experience working with native peoples in the Far East, knowing that their aspirations in terms of wanting to maintain their national identity—national identity in terms of the restrictions that are put on in this regard legally relative to the relationships, the legal relationships of, for example, the Navajo Tribe to the United States—is very, very strong, extremely strong.

And I would not opt for the stated option number three, which you cited, because that would continue the jurisdictional kinds of problems and the competition which goes with competing for various resources that could be available under that particular kind of arrangement. As you well know, it is an extremely complicated affair to try to work or to try to coordinate and cooperate with many, many distinct governmental entities. They are trying to do this in education and social services and, in my own judgment, I don't think it will ever work, especially in the case of the Navajo. It is very clear where the geographical lines are, and it is very clear, in my own judgment and interpretation of the treaty, that there is, in fact, a Navajo Nation.

I think if the sovereign rights and the integrity, the territorial integrity is spelled out in the treaties and other Federal regulations and legislation and orders, et cetera, are honored, I think you have solved basically the problem. It is going to be complex. A lot of negotiations. But I think if you move toward that option, either State or commonwealth arrangement, I think it is a working solution. As a matter of fact, I was on a task force made up of expert individuals who concluded that that was a viable option, given the realities of our Nation's State system, of the policies of federalism, and the essential necessity for a country to recognize the differences of its people.

ACTING CHAIRMAN HORN. Did I hear you estimate that, roughly, $200 million in all types of assistance comes to the Navajo people? That, conservatively, boils down to $2,000 a person.

The President, in the past, has made some moves in terms of a family assistance plan, recently in terms of cash assistance on housing.

Would you favor a solution perhaps to economic infusion of capital on this reservation, of being not allocation through Federal programs but a flat grant of $2,000 for every—per capita for every Navajo here, and then eliminate all other Federal programs? There would be no sewer grants. There would be no this or that type of grant through BIA. It would just be a flat cash assistance, putting money in people's pockets so they can make their own decisions in relation to those funds.

MR. MILLER. In answer to your question, Mr. Chairman, I think the history of this particular kind of approach is disastrous. This has been tried before. When funds from various claims have gone on a per capita basis, in the history, this has been a failure.

I think all of the tribes need enough capital in order to systematically utilize and invest it so it will be of benefit to the entire reservation populations. I think that in changing Federal Government assistance policies, they have to be extremely well thought-out. And I would say that there does need to be considerable amount of research in regards to this that should be done. I think it is going to take some time in order to move toward getting all the Federal Government agencies to do something of this nature.

I just would like to comment relative to your question, but also related to a question which Mr. Rankin had posed to Dr. Aberle, and that is the need for, always, more additional funds. I think if we look, as I have looked, in part, on the way in which we use the Federal Government funds, I think there we can find the solution to the problem of additional resources required for economic development. It is a matter of allocating the existing resources to be utilized more effectively. We are presently putting money out which does nothing. It just goes.

Practically all trade and commerce is controlled by someone else, as Dr. Aberle has mentioned, and it goes off the reservation. If the Navajo controlled the means of producing the basic needs and services, which others are now doing for them and controlling for them, this would help develop a multiplier effect so that the dollar that comes onto the reservation can be more utilized. I think it is one, initially, of allocating resources.

OMB, I think, has already indicated that most of the reservations will not receive more funds in 1975, specifically. So how do you utilize existing resources and invest those resources so that you can get a return on your investment? I think this is the problem, immediate problem.

ACTING CHAIRMAN HORN. Along this line, Dr. Aberle, you mentioned the need for Federal capitalization. How do you see this? A no interest, long term, revolving fund where, say, the Federal Government gives a basic investment principal which the tribe can then draw on to meet certain priorities that the tribe selects? Or do you have some other ideas of implementation?

DR. ABERLE. It would have to be long term and large scale. And whether it would have to be no interest or low interest, I would not want to settle at this meeting.

ACTING CHAIRMAN HORN. In other words, you feel that you would agree that it has got to be long term. It has got to be large scale. The interest, just as in perhaps rural electric cooperatives, remains to be decided. But, presumably, it would be a fairly low interest. But the idea is to get something under the jurisdiction of a tribal government to meet the needs of a community, as such?

DR. ABERLE. That is correct.

ACTING CHAIRMAN HORN. Mr. Buggs.

MR. BUGGS. Just one question, Mr. Chairman.

In connection, Mr. Miller, with the concept that Dr. Horn raised of a State or commonwealth, is there anything that the Federal Government now provides that would be withdrawn under such a status that the Navajo should keep in terms of protection?

MR. MILLER. I think the Navajo Nation can have a tribal government which is independent of all outside influences and jurisdictions and still maintain its trust relationship with the Federal Government.

ACTING CHAIRMAN HORN. Well, it poses one interesting constitutional question now that Mr. Buggs has raised, which is that under the Constitution, each State is guaranteed a republican form of government.

And the question would be, to what extent is the present relationship between the tribes and the chapters a representative republican form of government, which I will leave to lawyers, philosophers, and political scientists to answer. I do not ask it as a question.

Mr. Glick.

MR. GLICK. I have a couple of quick questions I would like to ask.

Mr. Miller, you characterized the economy of the reservation as largely dependent on or filled out by some $200 million of, I guess, Federal funds you had in mind coming onto the reservation. Is most of that in the form of salaries for Government personnel, BIA and others, and education funds, and a small amount for BIA welfare, but largely in terms of education and road building, things like that, and not in terms of individual subsidies?

MR. MILLER. Individual subsidies?

MR. GLICK. I mean, to individuals. That is, the welfare aspect of it is relatively small.

MR. MILLER. I believe if you characterize that or you operationally define that as specific funds like social welfare, restrict it to that, I would say that it is. But I think the overall analysis of the funds which are administered on the Navajo can be characterized as welfare.

MR. GLICK. Yes, I see what you mean. But not individuals?

MR. MILLER. But not individuals.

MR. GLICK. Dr. Aberle, I think you noted that there is opposition on the part of a leadership in the border towns to economic development on the reservation. Do you think that they really have analyzed the situation correctly, or do you think that it might be possible that their interests would be served by development on the reservation?

DR. ABERLE. In my judgment, it would. It would seem to me that if you had a development of ordinary commercial facilities on the reservation—the 10-year plan shows, very nicely, how very deprived the reservation is in this respect—that this would mean more Navajo income on reservation, and that it would mean that if amenities on the reservation were provided and there were more income on the reservation, there would arise needs for other and more specialized facilities off reservation. I think that any multiplier effect on the reservation is likely in the long run to benefit off-reservation communities.

I would like to interject one point about this notion of sovereignty, and that is that I do regard the Navajo territory as very precious, and I would be concerned to see that guarded. That is not relevant to your question, but it is relevant to a point Mr. Miller was talking about.

MR. GLICK. One final question I would like to ask, and maybe it really should not be asked by me nor answered by you and should only be asked by Navajos and answered by Navajos, but suppose in the future, the massive infusion of Federal funds or other funding from wherever were to come into the coffers of the tribe so that the tribe was able to undertake great economic development on its own of a profitmaking nature, what would be the benefit?

What should be done with the profit? Should the profits that the tribe would own or earn be used to replace the money that comes from the Federal Government for schools and health services so that the tribe, itself, would provide these for the people? Should it be distributed on a per capita basis?

What is the end result of the tribe having great economic wealth, itself? Where would that lead?

DR. ABERLE. I am not sure they would have great economic wealth.

I would hope that this would lead to further Navajo development, that—for example, the amount of money that needs to be used and could be used in the development of the traditional sector of the economy. The funds necessary for that are very large. I am not sure how interested the Federal Government can be in that.

And there is a tremendous amount to be done in the way of water and pasture and livestock development on the reservation. It would be possible to increase the carrying capacity of this range in various regions, anywhere from threefold to thirtyfold, and provided that meat continues to be in short supply, that would be a very good thing for a large number of Navajos. I would think that there would be all kinds of internal uses for those funds.

ACTING CHAIRMAN HORN. Mr. Miller.

MR. MILLER. I would agree with Dr. Aberle and would also state that I think given the opportunity for the Navajo people to really study the options which it has, to utilize resources, I think that is an obligation that we have in a Federal assistance program—is to assist the tribe through the educational process, to learn about all the options open to them in order to best utilize whatever resources they may accrue, collectively.

I think through the democratic tribal council process, laying the facts and the options on the table, that the tribe can make decisions in terms of how it would allocate resources which are accrued as a result of the resources—mineral resources, in most cases, being collectively owned—and you are always going to have a mesh between the private sector and what is owned by the tribe collectively, as possibly in Singapore. It would be the best example that I know where the private enterprise and the ownership, you know, by the government, per se, you know, is very well meshed.

MR. GLICK. Thank you very much.

Mr. Chairman, I have no further questions.

ACTING CHAIRMAN HORN. Well, thank you very much, gentlemen. I think the Commission has learned a great deal from you as experts.

I note that Mr. Miller was a Gold Medal javelin winner with the 1952 Olympics, and I am long familiar with Dr. Aberle's work. I guess you both deserve a gold medal for the testimony.

MR. MILLER. Silver medal.

ACTING CHAIRMAN HORN. Silver medal. Well, given what is happening to gold and silver, I think you are in good shape either way. So thank you, gentlemen.

Would Mr. Hardy and Mr. Salabye come forward, please.

[Mr. Joseph R. Hardy and Mr. Robert E. Salabye were sworn and testified as follows.]

TESTIMONY OF MR. JOSEPH R. HARDY, DIRECTOR, NAVAJO SMALL BUSINESS DEVELOPMENT CORPORATION, AND MR. ROBERT E. SALABYE, DIRECTOR, DINE COOPERATIVE, INC.

ACTING CHAIRMAN HORN. Please be seated.

Mr. Glick.

MR. GLICK. Gentlemen, would you please state your names, your addresses, and your occupations for the record. Mr. Hardy, first, please.

MR. HARDY. My name is Joseph R. Hardy. I am a resident of the Navajo Nation. I am the director of the Navajo Small Business Development Corporation which is known in Federal circles as a business development organization and an affiliate of the Office of Minority Business Enterprise, Department of Commerce.

MR. GLICK. Mr. Salabye.

Mr. Salabye. My name is Robert E. Salabye, and I reside in Chinle. I am director of Dine Cooperative, Inc.

Mr. Glick. Mr. Salabye, I understand you have a written statement that you wish to submit for the record.

Mr. Salabye. Yes. I have, here, written a prepared statement.

Mr. Glick. Mr. Chairman, with your permission, I will now introduce this into the record.

Acting Chairman Horn. It will not be an exhibit but rather in the record at this point?

Mr. Glick. Yes.

Acting Chairman Horn. Okay, it will be introduced without objection into the record at this point.

Mr. Glick. Thank you.

[The document described was marked Exhibit No. 10 for identification and received in evidence.]

Mr. Glick. Mr. Hardy, I will begin some questioning with you. Can you tell me how long you have been associated with the Navajo Small Business Corporation, Development Corporation?

Mr. Hardy. Yes, since October of 1972.

Mr. Glick. And before that, what kind of work were you doing?

Mr. Hardy. I worked as director of the research and development section of the office of Navajo economic opportunity.

Mr. Glick. Could you pull the microphone up to you slightly, please, Mr. Hardy. Thank you.

Can you describe for us the functions and the goals of the Navajo Small Business Development Corporation?

Mr. Hardy. As you may know, the Office of Minority Business Enterprise was a program developed by the present administration to make available to minority groups the opportunities for—to become involved and to participate in the small business sector. As an affiliate of the Office of Minority Business Enterprise, we are in—we follow the goals as outlined by the national office, and our primary interest is seeing that small business be established on the Navajo Reservation.

We, one, assure Navajo equal access to economic benefits of business enterprise. Two, we expand opportunities for Navajos to own and develop their own business. Three, we increase Navajo entrepreneurs' capabilities to improve their business operations. And, four, we improve Federal administrative efforts in support of Navajo business enterprise.

Mr. Glick. By whom is your agency or is your corporation funded? Is it the Office of Minority Enterprise?

Mr. Hardy. Yes, it is.

Mr. Glick. And it is funded on an annual basis, I assume?

Mr. Hardy. That is correct.

Mr. Glick. At what level? Can you tell me what the current budget is?

Mr. Hardy. One hundred thousand.

Mr. Glick. One hundred thousand. And is that an operating administrative budget? Or is that, in fact, a loan budget?

Mr. Hardy. No, that is an operating budget only.

Mr. Glick. I see. Can you give us some description of the current state of small business development on the reservation, particularly in terms of Navajo-owned and operated businesses?

Mr. Hardy. Navajo Nation sovereignty has presented several conflicts between State laws that have been and are being handled through the courts. And since State laws do not apply, the Navajo Reservation is exempt from any sales tax. The Navajos are also exempt from real or personal property tax. This condition, however, has served to further isolate the Navajo from relationships with organizations who operate under State laws. This pertains, especially, to financial institutions and the eligibility of Navajo property to be considered as collateral against loans.

I will be giving some of the problem areas and obstacles of Navajo economic development, and as it pertains to business development.

Isolation is another of the problems, or obstacles, to development. As you know, the geography and physical separation of the reservation has created an isolation, in addition to cultural separation between Indians and non-Indians.

The changes in the industrial and commercial complexes occurring in the mainstream of the United States has a last and least effect on the reservation. Technology, new industries, and innovations are observed throughout the country before this significance is felt by the Navajos living on the reservation.

Employment and income is another obstacle. Accurate figures are not readily available on employment and income for the Navajo Reservation. However, certain sources have provided a general indication of the Navajo status.

The relative comparison of the Navajo and his average non-Indian counterpart provides a good view of the problem. An estimate for the per capita income for the Navajo for 1970 was only $753; whereas the average American was receiving $3,700.

In comparative terms, this means that the average person in the United States has approximately $2,900 more to spend on food, clothing, and shelter than the Navajo. It is understandable, then, that disposable personal income is small indeed. The Navajo has little, if any, income to save or to inject into the local economy.

To further aggravate the picture, the incomes that are generated on the reservation, as explained earlier, flow off to non-Indian communities without generating additional employment or secondary sources of income for the Indian reservation. In other words, in the absence of a well-developed business community, the effect is that we do not have the multiplier effect that is needed for a developing country.

The unemployment rate is somewhere near 65 percent, as indicated earlier. Even many of those that do have jobs are underemployed. For such a large force on the reservation, labor force that is, and the surplus of semi- and unskilled labor, there exists a heavy drain on the economy. These individuals become dependent on welfare programs; at the same time, [they] contribute little if anything to the economy.

Although there is a large surplus of labor, it seems ironic that there is a shortage of persons with critical skills. While the surplus labor may attract certain labor intensive industries, a shortage of skilled workers, technicians, and management personnel discourages the development of a commercial and industrial base.

Another obstacle toward business development is education and language. The educational level of the Navajo is probably the lowest in the United States. As I heard earlier, the attainment level of the Navajo is somewhat near the 5th grade level; whereas in other parts of the country and for the non-whites, it is about the 12th grade, and for a nonwhite community about the 9th grade.

English is not the primary language on the Navajo reservation. Among those Navajo who have little formal education, English is not likely spoken or understood. If you were to observe our tribal council in sessions, you will observe that the sessions are conducted both in the Navajo language and in the English language. For the entrepreneur, the businessman, it is necessary to have an understanding of English and business terminology in order to conduct business with a non-Indian community.

Still another factor that prohibits business development is the cultural factor. This was spoken to earlier. Tribal cultural patterns are critical factors as a barrier to business development in employment of Navajos. In many cases, these patterns are diametrically opposed to those behavior patterns that are taught in the dominant American culture. These behavior patterns, which include values and attitudes, become deep-seated and are difficult to change.

The Navajo society is changing, however, and this makes it difficult to determine which elements of the culture are remaining and which have been altered or changed.

Although there are certain very general characteristics about the culture in Navajo behavior, the Navajos are so individualistic that it would be difficult to make any blanket statement with accuracy or validity. Certain aspects of the culture have been observed and, in one way or another, retard business and economic development in general.

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Some of these that should be considered are the absence of what some people term "a competitive spirit" in business matters, an inconsistent attitude or orientation toward the work ethic, an inability to save, overextension of credit to family members, a religion which discourages capital accumulation, and lack of aggressiveness.

Land and business site leases, or the procedure in obtaining these leases, is still another factor which prohibits development.

On the positive side, it can be said that Navajo land offers a tourist attraction. The tribe does derive an income from the tourist trade, but even this has not been promoted to the fullest extent.

If we were to make a general statement, we would say that much of the reservation is unproductive. Raising livestock and growing crops are seriously hindered due to the desert, mountains, and canyons. Most of this land is not conducive to agricultural development. The Navajos raise cattle and sheep, but the land is, for the most part, barren and not fertile.

The procedure for obtaining land for business sites is, I think, one of the principal problems to business development on the reservation. As you may or may not know, reservation land may not be sold to a non-Navajo nor may it be sold by one Navajo to another. Because of this unique arrangement, land for business site leases cannot be obtained by purchasing it, as it is in the case outside the reservation.

In order to acquire a business site lease, the individual Navajo must submit an application to the tribal government. This application is then routed through a series of offices and agencies of the tribe and must be approved by each. In some cases, we have known this procedure to take upwards of 3 or 4 more years.

Currently, there are about—and I say "about" because, depending on the way you count or figure them—about 20 steps in the application process in obtaining a business site lease. The length of time this approval procedure takes varies from individuals, depending on the information required by the various offices. Some are granted within 1 year, while others may take even 3 or more years. There are some requests that are held up indefinitely in this process awaiting further information. This delay in obtaining the site lease often brings about discouragement and causes the entrepreneur to lose interest in starting his business.

In the larger society, acquisition of a business site lease is facilitated by the entrepreneur's desire to start a business and the sellers' or the lessors' desire to consummate an agreement. This does not take place when a Navajo businessman has to deal with the government. The result of this time-consuming system is the dissuasion of new business starts.

Another deterrent to business development is the scarcity of capital. The availability of capital is a critical problem in all areas of minority business development and overall economic development for the whole Nation and, in particular, the Navajo Nation.

The Navajo Reservation has atypical problems which separate it from the mainstream of the American economy.

The scarcity of capital is directly related to other problem areas which have already been discussed, such as the low incomes, the high unemployment, the absence of savings, and land status, et cetera.

To date, there is really no credit structure on the reservation which can meet the needs of business. We have the Navajo Tribe revolving credit program. We have the—or we have a credit union, and we have had in the past the Indian Business Development Fund. But these are not sufficient to provide the financing requirements for business.

Private sources of capital are not interested in making credit available for fear of not being able to reclaim property on the reservation. Few private organizations have invested in development programs or industries in the area.

Most Federal Government funds have been used to finance social services and, in relation, little has gone into directly productive enterprises.

I offer no real solutions to these problems or obstacles that I have mentioned, except to say that what we need is a greater amount of funds for loan purposes. Presently, when we take financial loan packages to the banks for financing, we are asked by the banks to provide anywhere from 10 to 25 percent equity injection before the loan can be made. Now, the people that we are dealing with do not have this type of money.

MR. GLICK. Mr. Hardy, I wonder if, in the interest of time, perhaps—because we are getting late in the day—if you might submit your statement for the record. I see that you appear to have a prepared statement.

And then let me ask you just one or two short questions.

Will that be all right, Mr. Chairman?

MR. GLICK. Can you give any idea, Mr. Hardy of what percentage or how many of the small businesses on the reservation are Navajo-owned and operated?

MR. HARDY. Of the 196 business establishments, approximately 69 are Navajo-owned, and 125 are non-Navajo-owned.

MR. GLICK. Of those 69 that are owned by Navajo, how many of those are, in fact, gas stations or businesses of that nature?

MR. HARDY. Of the 69 that are Navajo-owned, approximately 56 are service establishments.

MR. GLICK. So that seems to be the largest form of Navajo entrepreneurship?

MR. HARDY. Yes, sir.

MR. GLICK. Thank you.

MR. GLICK. Now, Mr. Salabye, you are involved in various cooperative types of business establishments. Can you tell us how long you have been doing that and what kind of operations you are now involved in?

MR. SALABYE. Yes. I've embarked on this operation since 1970 simply on the fact that there's no funds available to us readily in grants form or loan forms or that we can't get our land, our various collaterals, to get these loans.

We embarked on an operation, that is a cooperative venture, which is a nonprofit organization, and we began to cater and solicit funds from private foundations and other Federal monies that is available to us, which were very few.

And we are operating out in various fields, mainly in services type development, cooperative development and consumer—food cooperative development type, and then arts and crafts cooperatives, and hay and feed cooperatives. And we are still trying to get a farming cooperative going.

MR. GLICK. What makes the cooperative form of business venture more attractive? Is it the easier ability to raise funds or what?

MR. SALABYE. Yes. That and the fact that you can relate some of the cooperative ideas directly to some of our cultural ways of living, meaning communal-type sharing and in load responsibilities and what not.

MR. GLICK. Do you have particular legal problems in getting funds for cooperatives?

MR. SALABYE. No, not now. Just—yes. Just one part of it there. We were confronted with the fact that we were not a tax-exempt group or under the 5013—C status of the Internal Revenue Code saying that we couldn't receive monies because they couldn't write off on their tax.

MR. GLICK. I see.

MR. SALABYE. So we eventually worked on that to establish a tax-exempt corporation which I am directing.

MR. GLICK. Thank you.

Mr. Chairman, I have no further questions.

ACTING CHAIRMAN HORN. Commissioner Ruiz.

COMMISSIONER RUIZ. No questions.

ACTING CHAIRMAN HORN. Commissioner Rankin?

COMMISSIONER RANKIN. Just one question.

How many businesses, Mr. Hardy, have failed that you helped plan the financing of in the last 2 or 3 years? Any?

MR. HARDY. We have only been in operation since October of last year and—

COMMISSIONER RANKIN. And none have?

MR. HARDY. —and at this point, we have not experienced any failures in the businesses that we have assisted. But there are—the business failure rate is above the national average, which is close to 80 percent.

COMMISSIONER RANKIN. Thank you.

ACTING CHAIRMAN HORN. Commissioner Freeman.

COMMISSIONER FREEMAN. I have no questions.

ACTING CHAIRMAN HORN. Mr. Buggs. Mr. Glick, any further questions?

MR. GLICK. No.

ACTING CHAIRMAN HORN. Gentlemen, we thank you very much. I think you have provided a very excellent record.

Mr. Hardy's statement will be put in the record at this point.

[The document described was marked Exhibit No. 11 for identification and received in evidence.]

ACTING CHAIRMAN HORN. And your statement has already been inserted earlier. I believe you had a prepared statement, Mr. Salabye.

MR. SALABYE. Yes.

ACTING CHAIRMAN HORN. Did you have another comment you would like to make?

MR. SALABYE. Yes. I had an additional comment which I didn't put on.

It's the fact that some of the reasons—not only financial—we went into this type of business is because, also, that various BIA leases, business agreements, or whatever, was not readily available to us, and we went ahead and done these business operations without business site leases because we are classified as community development rather than business site or businesses.

ACTING CHAIRMAN HORN. Fine. Thank you very much. Thank you, gentlemen.

Our next panel, and the last panel for the day, will be credit availability panel. Will Mr. Wood, Mr. Goldberg and Mr. Snell please come forward.

[Mr. Everett E. Wood, Mr. Stanley Goldberg, and Mr. Roy Snell were sworn and testified as follows.]

TESTIMONY OF MR. STANLEY GOLDBERG, DISTRICT DIRECTOR, SMALL BUSINESS ADMINISTRATION, PHOENIX, ARIZONA; MR. ROY SNELL, SMALL BUSINESS ADMINISTRATION, PHOENIX, ARIZONA; AND MR. EVERETT E. WOOD, BUREAU OF INDIAN AFFAIRS, WINDOW ROCK, ARIZONA

ACTING CHAIRMAN HORN. Please be seated.

Are you accompanied by counsel? There is another gentleman there.

MR. GOLDBERG. We are accompanied by our SBA counsel.

ACTING CHAIRMAN HORN. Could we have your identification for the record?

MR. STIEHM. Yes. I am Patrick Stiehm. I am the district counsel for the Small Business Administration in Arizona.

ACTING CHAIRMAN HORN. Fine. Mr. Stiehm, I did not swear you. If you are going to testify, I should swear you.

MR. STIEHM. I am not here in the capacity as a witness. I am here to act as legal counsel for Mr. Goldberg and Mr. Snell.

ACTING CHAIRMAN HORN. Very fine.

Mr. Glick.

MR. GLICK. Thank you, Mr. Chairman.

Gentlemen, would you please each—except counsel—state your names, addresses, and occupations, beginning with Mr. Goldberg and then Mr. Snell and Mr. Wood.

MR. GOLDBERG. My name is Stan Goldberg. I am the district director of the Small Business Administration for the State of Arizona. I am located in Phoenix. Arizona.

MR. SNELL. Roy Snell. I am the economic development specialist. And I am located in Phoenix.

MR. WOOD. My name is Everett E. Wood. I am the area credit officer for the Navajo area, located at Window Rock, Arizona, living in Gallup, New Mexico.

ACTING CHAIRMAN HORN. Can I just get it straight. Mr. Snell, you are with the Small Business Administration. Mr. Wood, you are with the Bureau of Indian Affairs. Is that correct?

MR. WOOD. That is correct, Mr. Chairman.

ACTING CHAIRMAN HORN. Very good.

MR. GLICK. I would like to begin my questioning with Mr. Wood.

Mr. Wood, can you tell us briefly about the Navajo revolving credit fund? Tell us about the credit fund, its goals, its objectives, and how it goes about performing them?

MR. WOOD. Yes, sir, Mr. Glick. The Navajo revolving credit fund, as it presently exists, started back in 1948 with an injection of a loan from the BIA's revolving credit fund in Washington. That loan was $700,000.

As the program grew, the tribe put some of their own funds in the program.

At the present time, as of June 30, 1973, the loan from the Bureau has been reduced from $700,000 to $250,000. The tribe has invested of its own funds nearly $2 million—$1,988,351. Earnings of the program that have been retained in the program are $429,906, for a total investment in the program of $2,668,257 as of June 30, 1973.

The objective of the program is to make loans to members of the Navajo Tribe for economic development purposes, what we call major rehabilitative type loans. We are not in the small loan, quickie loan business. We leave that up to the peripheral loan companies and to the banks.

Our objective is to get people, members of the Navajo Tribe, on their feet economically and to provide financing where they

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cannot get their credit elsewhere on reasonable terms and conditions. Our program is also intended to improve the social economy—maybe I shouldn't use the word "economy"—social conditions of the Navajo people. A lot of our loans go for home—home improvement, home construction, home purchase.

MR. GLICK. Do any of the loans go for business purposes, for entrepreneurs?

MR. WOOD. Yes, sir. Yes, sir.

MR. GLICK. That is also a function—

MR. WOOD. Yes, sir.

MR. GLICK. These are interest-bearing loans, I assume?

MR. WOOD. Interest-bearing loans?

MR. GLICK. Yes.

MR. WOOD. Yes, sir. I would like to say in that regard, Mr. Glick, that our interest rates are kept, oh, anywhere from 2 to 3 percent, and right now they could be even more than that, below the going rate in the area.

That is another objective of the program is not to burden people, members of the tribe trying to get started in business or with better housing, with a heavy interest rate. You might be interested to know that at the present time our interest rates are only 6 and 7 percent, and the going rates for similar loans are 10 percent, 11 and 12.

MR. GLICK. How many loans are there now outstanding?

MR. WOOD. As of June 30, 1973, there were 431 loans outstanding in the total amount of $2,062,083.

MR. GLICK. Mr. Wood, the loan fund is actually a joint arrangement between the tribe and the Federal Government acting through BIA?

MR. WOOD. That is correct.

MR. GLICK. Is there anything in the agreement, or is it by regulation, that the director of the—the administrator of the fund is an employee of BIA rather than a member of the tribe?

MR. WOOD. Yes, sir. It is in the agreement, and it is also in the Bureau of Indian Affairs' manual.

MR. GLICK. Can you give me a citation for that?

MR. WOOD. No, sir. I don't have it with me, the citation, but I would be glad to give it to the Committee.

MR. GLICK. Fine.

MR. WOOD. At a later time, a later date.

ACTING CHAIRMAN HORN. Fine. It will be furnished to the counsel and inserted in the record at this point.

MR. WOOD. Would you want the citation from the plan, also?

MR. GLICK. Yes, please.

MR. WOOD. Yes, sir.

[The information described, to be marked Exhibit No. 12 for identification, was received in evidence.]

MR. GLICK. Just one more question. Can you tell us what the procedure is for an individual who is interested in obtaining a loan from the revolving credit fund? How does one go about it?

MR. WOOD. Yes, sir. The contact should first be made at the agency office serving the area in which he wishes to build his home or conduct his business. Each agency has what we call an agency credit officer. There are, as you know, five agencies and each agency has a credit officer. Members of the tribe desiring credit are advised to go to the local agency credit office serving their jurisdiction.

We have lots of members that come directly into the area office which, of course, we have no objection. We will be glad to discuss their proposal with them and then give them advice and counsel. But in the final analysis, we ask that they see their local credit officer because he is the one that is going to have to work with them in developing the application and, if the loan is made, in following up on the loan.

MR. GLICK. Who has the approving authority of the loan?

MR. WOOD. I would like to mention a little bit about the organization of the credit program of the tribe, if I may, Mr. Glick.

MR. GLICK. Well—

MR. WOOD. It is composed—let me say this. It is supervised by a Bureau of Indian Affairs employee. But the loan program is technically a tribal loan program operating under a plan of operation approved by the tribal council and the Bureau of Indian Affairs.

The credit committee of the tribe, which is composed of five councilmen, have authority to approve housing loans up to $10,000, and other loans up to $5,000, except loans to Government employees and loans for education.

MR. GLICK. What about loans over $5,000 that are not for housing purposes, for purposes other than housing?

MR. WOOD. They come to the area director for approval.

MR. GLICK. The BIA area director?

MR. WOOD. BIA area director.

MR. GLICK. Why is that distinction made?

MR. WOOD. It is in the plan of operation because of the supervisory nature of the program.

MR. GLICK. I see. Thank you, Mr. Wood.

Can you, Mr. Goldberg, if I can turn to you now, give us an idea or describe for us the programs of the economic development division of the Small Business Administration? Have any of the economic development programs been instituted on the reservation?

MR. GOLDBERG. Well, counselor, yes, they have. We had no knowledge, when we were invited to come here or subpoenaed to come here, as to what would be asked of us. The information I give you will be general knowledge that I have. I can't give you any vital statistics, but I can give you general information.

The SBA program which pertains to the Indians is the minority enterprise program, and I would like, at this time, to read to you a letter under the date of July 24, 1973, which I wrote to Mr. Louis F. Laun, L-a-u-n, who at that time was the Administrator for Operations for SBA in Washington, D.C., and who, since that date, has been promoted to the Deputy Administrator of the SBA, pertaining to the Navajo problem.

MR. GLICK. I wonder, perhaps, Mr. Goldberg, if you might summarize for us the information which you transmit in the letter, and perhaps we can introduce it in the record later.

MR. GOLDBERG. I can condense it, if you don't mind.

I stated that after 4 years of study of the Indian economic situation, as it relates to the SBA program, it is my conclusion that their problems are separate and distinct from that of any minority group. SBA regulations and policies are not adapted to serving Indian applicants because of the unique history and development of the Indian people.

When the minority enterprise program became a part of the SBA, I am sure that the Indian was not considered in that light. It was mainly directed to the blacks, the Mexican Americans, the Asiatics, the Orientals. And solely because the people who administer this program from Washington are not acquainted with the habits, the cultural background of the Indians, I believe I can safely say that most of them would not know an Indian if they bumped into them. And therefore, the program they devised, in my opinion, excluded aid to the Indians, per se.

I feel, and I have stated it—you asked me to condense—that an Indian desk is vital and necessary, an SBA Indian desk for Arizona, whereby we can establish a desk that will deal solely with the Indian problems and, particularly the Navajo problems, since they are the largest group in the State, to enhance their chances of obtaining financial aid and consultation feasibility studies which we give to other groups of minorities or disadvantaged people. This is vital, I feel, to the Indians in Arizona.

And I might say that, since I have requested this, we have been doing quite a bit of work on it, and it has not fallen on deaf ears in Washington.

MR. GLICK. Well, SBA has, in fact, made some loans to individuals living on the reservation. Can you give me any idea as to the extent of that?

MR. GOLDBERG. I believe that since the first of this year, we have made approximately eight. I think, overall, we are talking about 25. I am not positive of that, but I think it is pretty close.

MR. GLICK. And how much would that run in dollar amount, do you have any idea?

MR. GOLDBERG. I don't have that. Those figures are computerized in Washington. Had I known what the general trend of questioning would be, I could have had it.

ACTING CHAIRMAN HORN. Well, I take it that these can be furnished for the record.

MR. GOLDBERG. Yes. Yes, we can.

ACTING CHAIRMAN HORN. So we will assume that on the question, you can give a generalized answer and then furnish counsel specifics for the record—

MR. GOLDBERG. Yes.

ACTING CHAIRMAN HORN. —which will be inserted at this point.

[See Exhibit No. 12A for this information.]

MR. GLICK. I would like to ask Mr. Snell, if I could, whether—well, first, if you could, give us just a brief description of your program responsibilities, to put it in context.

MR. SNELL. Well, the local development company program is a program geared to help small communities help themselves. To do this, they have to form what we call a local—a State charter local development company consisting of at least 25 members in the community. If they do this, we will then provide leverage money to make something happen within that community as far as capital improvements go.

In other words, they have to form a development company. They have to raise money. For every dollar the development company raises, we can lend nine over a long period of time at lower rates of interest. And I am talking about 5½ percent. The maximum loan we can make for any one project is $350,000. But it can only be used for planned expansion, acquisition of land and buildings, planned expansion, and machinery equipment. This is my program.

I regret to say we haven't been too successful on the Navajo Reservation in forming development companies.

MR. GLICK. There has not been an LDC, local development corporation, formed?

MR. SNELL. Since 1965, we have had only one formed, and the project was never completed.

MR. GLICK. What do you think have been the obstacles to formation of this kind of operation?

MR. SNELL. At the present time, we have had a lot of conversations, but I think Mr. Hardy pretty well nailed it down, which is that the larger plants that we are talking about, the Navajo Nation wants these nonprofit, and we cannot make a loan to a nonprofit organization. That is our biggest obstacle at the time.

MR. GLICK. You are prohibited by the regulations?

MR. SNELL. We cannot make loans to nonprofit institutions.

MR. GLICK. You say there was one LDC, there was an attempt to form one.

MR. SNELL. We had one formed, and we had a project and it fell through. Because of the nature of the project, we tried to get the

Government agencies to guarantee that they would get the contracts for at least a 3-year period. They wouldn't do it, and that was why it fell through.

We can't make a loan for 1 year at a time. These loans that we make are for continuity, for long periods of time, and unless we get some assurance that this is a viable institution over a long period of time, we just can't do it.

MR. GLICK. What kind of a business was it to be?

MR. SNELL. It was a dry cleaner and laundromat in Tuba City.

MR. GLICK. And what was the Government agency that would not—

MR. SNELL. I wasn't on board at that time, but it was the—wasn't it the—

MR. GOLDBERG. The Bureau of Indian Affairs. The amount was $350,000, which we were willing to go along with this. But we wanted a 3-year guarantee, and they wanted to give us a 1-year guarantee, which meant nothing. We were even stretching it for 3 years because it usually should be for a much longer period of time. We were doing everything we could to try to put this into operation. We had very little cooperation.

MR. GLICK. Do you have any idea why the BIA would not give a guarantee?

MR. GOLDBERG. Their rules and regulations, I believe, prohibit it.

MR. WOOD. Mr. Glick, I might speak to that point, but don't quote me as legal authority on it. I may be somewhat in error. But, as you know, most of these Government agencies are operating on an annual budget and the contracting is based on the funds received for the current year.

It seems to me that it would be asking quite a bit for any Federal agency to obligate itself under, say, a commercial laundry contract, say, for the schools for longer than a year when you can't be assured that you are going to be in existence even next year or get funds for the next 2 and 3 years. So this is the way I understood it, the contract, the reason why it could only be guaranteed, let's say, or made for 1 year.

MR. GLICK. And the basis of the fact that the school might go out of existence the following year.

MR. WOOD. No, sir. It's a matter of funding. Ours is an annual appropriation. I imagine your Committee is funded annually.

MR. GLICK. Yes.

MR. WOOD. You don't know whether you are going to get funds next year or not, do you? Could you enter into a contract with us that you will sit on this stage next year?

MR. GLICK. Well, I would just as soon not comment on that.

ACTING CHAIRMAN HORN. Well, to answer your question, the answer is no. We could only contract up to the amount of money that we had available in our budget.

There are some agencies, however, that are given contracting authority and, of course, public works projects are entered into, but then the amount due on the appropriate commitment is appropriated annually. So there is a variety of Federal funding.

But I think this is an important point, and I would like to have the Bureau of Indian Affairs furnish for the record, at this point, exactly what their policies are in writing because I think we ought to get that clarified with relation to the inability to make a commitment beyond 1 year, if it is due to a 1-year authorization appropriation process.

MR. WOOD. Mr. Chairman, are you directing that suggestion to me?

ACTING CHAIRMAN HORN. Yes, please.

MR. WOOD. That's not my field but—

ACTING CHAIRMAN HORN. Well, we will have the General Counsel write to the Commissioner of the Bureau of Indian Affairs.

MR. GLICK. We will do that, sir.

[See Exhibit No. 12B for this information.]

MR. GLICK. I would like to ask Mr. Snell, since there have been some LDC's organized on other reservations in Arizona, as I understand, what kind of changes in practices or policies would have to take place on the Navajo in order to do the same thing?

MR. SNELL. Well, basically, the development companies would have to agree to fund only profit type businesses, profit only type businesses. It has to be a viable business.

I mean, we are putting this money out for as long as 25 years. We want a viable business and not one that only has at least a year or 18 months' life.

MR. GLICK. What kinds of businesses have been funded on other reservations?

MR. SNELL. Manufacturing, basically.

MR. GLICK. I see. Has there been any attempt to establish anything like that on the Navajo?

MR. SNELL. Well, there was a watchmaking firm, I think, the early part of this year that tried to come up here. And for some unknown reason, they went back to Texas. That's the only one I'm aware of.

MR. GLICK. I see. Well, I just wanted to—

MR. SNELL. That's an eligible small business.

MR. GLICK. I would like to ask Mr. Goldberg if you are aware of any other Federal loan programs that might be available for entrepreneurship on the Navajo, besides SBA?

MR. GOLDBERG. I don't know of any. I don't believe there are any other Federal programs that would fit the category that would be necessary to make a loan on the Indian reservation.

We work under a very loose criteria. The district directors of the SBA have the authority to make a loan to the disadvantaged if they have assurance, reasonable assurance, that the loan can be repaid. Now, on the Indian aspect, that assurance is most often lacking. They just don't have it. Their annual income is not sufficient to guarantee this.

MR. GLICK. Do you think the situation is worse on the Navajo than on other reservations in Arizona?

MR. GOLDBERG. I don't know, counselor, if I would call it worse. I would say it has not been productive. The program has not been productive on the Navajo Reservation as it has on some of the others.

MR. GLICK. Has SBA had a representative stationed on the Navajo?

MR. GOLDBERG. Yes. We had a Navajo by the name of Mike Nelson who handled the ME [minority enterprise] program. He was stationed at Fort Defiance. Mike came to us and resigned, and his reason for resigning—and he gave us a very, very good answer, and I'm going to back him 100 percent—a Navajo cannot effectively operate with Hopis and other kinds, and vice versa.

A Mexican-American cannot deal effectively with the Indians, nor can a woman. We replaced Mike with a woman. Her effectiveness was nullified. I feel that the only solution to this is an experienced, qualified, and trusted Caucasian that the Indians can deal with because then you are not identified with any particular tribe.

ACTING CHAIRMAN HORN. Mrs. Freeman.

COMMISSIONER FREEMAN. I would like to pursue some of the statements that have been made because I think that I am afraid that there are some statements that were made that are not accurate.

First of all, I want to know if what you have said concerning the restrictions of the SBA are in the legislation or in the rules and regulations, with respect to just what you have said, Mr. Goldberg and Mr. Snell.

MR. GOLDBERG. If I interpret your question correctly, Commissioner, they are in the rules and regulations of SBA.

COMMISSIONER FREEMAN. All right, then. As long as they are in the rules and regulations, as long as there is no legal prohibition, then SBA can change the rules and regulations, is that not correct?

MR. GOLDBERG. I think you are correct.

COMMISSIONER FREEMAN. Have you, Mr. Goldberg, or you, Mr. Snell, as you have seen the restrictive and limiting effect of the regulations, ever proposed to—I'm not talking about your letter now—ever proposed to SBA the elimination of that regulation?

MR. GOLDBERG. We have proposed not only the elimination of the regulation, but a revision of the regulations which would encompass some feasible method of dealing with the problems that we encounter on the reservation. And as I mentioned to

Counselor Glick, it has not recently fallen on deaf ears. I have a letter here which is quite lengthy where they are asking me to summarize the feelings of the meeting that I am attending here today and give it my own aspect as to what I think can be done and what should be done to alleviate this unfortunate situation, those are my own terms.

COMMISSIONER FREEMAN. Mr. Chairman, one of the things that is so distressing to me here is that it's a situation where there are two agencies, and either one or the other is used—it is sort of like you are pushing, throwing the ball back and forth, that is, from one to the other, and through their rules and regulations the result is that the loans are not made.

What I would like to ask Mr. Wood is, if in addition to the information which he is going to supply in writing to the Commission, if he will request from the Bureau of Indian Affairs if they have any contracts with anybody for more than 1 year.

ACTING CHAIRMAN HORN. Well, I think our General Counsel will make that request. It isn't Mr. Wood's. But it is a good question, and we will write the Commissioner of Indian Affairs, either the Staff Director or the Chairman, to request such information.

COMMISSIONER FREEMAN. Thank you.

ACTING CHAIRMAN HORN. Very good.

Mr. Glick, do you have any further questions?

MR. GLICK. No, sir. No, I do not at this time.

ACTING CHAIRMAN HORN. Commissioner Ruiz?

COMMISSIONER RUIZ. Yes.

Sometimes, we believe that which we like to believe.

Mexican Americans in California must be different from Mexican Americans in Arizona. In California, the Mexican Americans have worked hand-in-hand with the Indian. They just established a Chicano-Indian University, Davis, California. I was present at Albuquerque when a coalition was formed between Indians and Mexican Americans. And I was just wondering, as to your impression, which you asserted so dramatically, that you believe that any other than a Caucasian would inspire the credulity of a Navajo. Did you just take his word for it?

MR. GOLDBERG. Are you asking this of me?

COMMISSIONER RUIZ. Yes, Mr. Goldberg.

MR. GOLDBERG. Commissioner, I think you misunderstood my statement.

It is not the Mexican Americans who cannot work with the Indians. It is the Indians who seem not able to work with the Mexican American representative. We have them in our office.

The regional director of the SBA is Mr. Gilbert Montano, a Mexican American, a very fine man. They are dedicated. But when the Indian groups and delegations have come to our office and we have assigned our Mexican American representatives to talk to them, we got nowhere.

So it is not, as you seem to have interpreted my statement, that the Mexican Americans are not dedicated to the Indian cause. It is the reluctance that we have run into for the Indians to deal with the Mexican American representatives on the Indian problems.

COMMISSIONER RUIZ. It must be a special problem in this case, then. It is the only way I can analyze it because I have had a great deal of experience myself, as a Mexican American with Indians and with their acceptance, vice versa, and versa vice.

Thank you.

ACTING CHAIRMAN HORN. Mr. Rankin.

COMMISSIONER RANKIN. To summarize, it seems that the testimony here of what we need is change in the rules so that the Indians can take advantage of the loans. Isn't that so?

MR. GOLDBERG. Yes, sir, you are correct.

COMMISSIONER RANKIN. Just one corollary with that. Do you give technical assistance when you make loans?

MR. GOLDBERG. I am awfully glad you asked that question. The SBA has just been reorganized this past month and the priority on the new program is management assistance, not only to those who have loans with the SBA but to those who may contemplate having loans.

A person does not have to be a borrower from the SBA nor do they have to be a citizen of the United States to receive management assistance. We have two voluntary agencies. One is called SCORE, Service Corps of Retired Executives. The other is called ACE, Active Corps of Executives.

These people on a voluntary basis at no cost to the applicant will give consultation, feasibility studies wherever requested—if it's within a reasonable distance, because they pay their own expenses. Anyone who receives a loan and who may be having financial difficulties or some type of difficulties has merely to call the SBA or write us or come in, and we will assign someone to find out what their problem is. We will not solve it for them, but we will identify it and then it is up to them to take it from there.

COMMISSIONER RANKIN. You don't supervise; you wait until they ask you; is that it? Or do you, after you grant a loan—

MR. GOLDBERG. When we approve a loan the application now states that if the SBA feels that consultation is needed they will agree to it because if a payment is due and it doesn't come in, and a second payment is due and it doesn't come in, we naturally assume there is something wrong. Well, if we wait 6 months or 8 months as we have done in the past that business is so far down the drain you can't salvage it. Now, we get at it right away.

COMMISSIONER RANKIN. And so you've exercised this function frequently?

Mr. Goldberg. Yes, we have.

Commissioner Rankin. Thank you.

Acting Chairman Horn. Mr. Buggs?

Mr. Buggs. Mr. Goldberg, does SBA lose money on its loans ever?

Mr. Goldberg. Yes, sir.

Mr. Buggs. About what percentage?

Mr. Goldberg. I think the national average is around 11 percent. It is not—the SBA was not conceived to make money because we start up where the financial institutions let off. If a financial institution would grant a loan there is no need for the SBA.

Mr. Buggs. Does that mean that you make unsecured loans?

Mr. Goldberg. We make them this way, Commissioner. If an applicant would come to us for a loan, we are not in competition with the financial institutions. We always send them to the financial institution of their choice to try to get it. If they are declined and if the SBA feels that the applicant is worthy, qualified, experienced, and can make it, then we'll contact the financial institution and we'll say, go ahead and make the loan. Let's assume it's for $50,000—go ahead and make the loan, the SBA will guarantee it 90 percent. The financial institution's exposure is 10 percent. Should the loan at some time in the future go down the drain, so to speak, then the bank's exposure is 10 percent of the outstanding balance and we're immediately called upon to pay off our 90 percent. We do.

Mr. Buggs. What would have happened had you made that $350,000 loan and lost it?

Mr. Goldberg. It would be—we would make every effort to try to raise some collateral on the assets through auction or a private sale or find someone to take over the business, and if not, it goes into liquidation and it would be written off the same as any business loan that goes bad.

Mr. Buggs. Why would you want BIA to underwrite that loan?

Mr. Goldberg. Well, because of the size—it was a $350,000 project which we felt was beneficial to this community. They had contracts totaling $13,000 a year from colleges and universities to start with. On a $350,000 commitment which had been declined, not once but twice and was referred to my desk, I was trying every method that we could find to try to make this for the economy and the stabilization of the community.

Mr. Buggs. But could you have made it had you wanted to?

Mr. Goldberg. Yes, we could have made it. I could have made it. I declined it because of the lack of cooperation from the BIA when I contacted them personally and they said their rules and regulations prohibited over a 1-year guaratnee.

Now, there's another part that hasn't been brought out. They said, supposing that this firm is underbid on its services the following year and someone else comes in and takes over. I assured them that we would look favorably on this firm here because of the $350,000 commitment by us; we weren't about to allow anyone else to come in and take it away from them. It still didn't satisfy them.

MR. BUGGS. But what I can't understand is that both SBA and BIA get its money out the same taxpayer's bag and does it make any real difference who might have lost that money?

MR. GOLDBERG. Well, it makes a difference as far as records are concerned. I mean, we're trying to do a proper type of job. To go in—let me put it back to you, Commissioner, without any collateral, would you feel that a $350,000 loan was advisable? It's because it is taxpayer's money that we are careful of it.

MR. BUGGS. But you wanted BIA to take the risk.

MR. GOLDBERG. All we wanted them to do was a 3-year assurance that that business would be there.

MR. BUGGS. But that's a risk, isn't it?

MR. GOLDBERG. That is a risk, but we are taking a risk for $350,000. That wouldn't cover us any way, shape or form, but it would help.

MR. BUGGS. Why should they take a risk that you won't?

MR. GOLDBERG. Well, we felt we wanted their cooperation. We wanted them to come in with us on this risk. We were taking a far greater risk than they were. It just doesn't seem feasible to grant a $350,000 loan with no assurance of repayment. And if we didn't have some type of a guarantee backing us—we felt that 3 years would see this place over the hump. One year wouldn't do it, but 3 years would have enough seasoning to know how they could do it, or if they could do it, and we were willing to take that chance.

MR. BUGGS. Well, if you thought 3 years would see them over the hump couldn't you take a chance on 3 years as over against one?

MR. GOLDBERG. We didn't feel we should.

ACTING CHAIRMAN HORN. Now, I am confused. Am I correct on this laundromat loan, which is what we are talking about, SBA could guarantee 90 percent of it; is that correct?

MR. GOLDBERG. No, not—well, we could have—did you say we could have or would have?

ACTING CHAIRMAN HORN. Could have.

MR. GOLDBERG. Yes, we could have.

ACTING CHAIRMAN HORN. All right.

And you wanted BIA to guarantee the 10 percent, or what?

MR. GOLDBERG. It had to do with the lease, did it not, Mr. Snell?

MR. SNELL. It had to do with the assurance that the BIA would award the contracts to process the dry cleaning or laundry, not anything else.

ACTING CHAIRMAN HORN. In order that it could repay the loan?

MR. SNELL. That's right.

ACTING CHAIRMAN HORN. All right.

And BIA because they claimed they are on an annual appropriation felt they could not contract for a 3-year commitment.

MR. SNELL. Mr. Goldberg, could I make one more statement as to another problem?

Prior to this time the laundry contract went to a firm in Winslow. If we put this plant in Tuba City with rather high overhead, the following year this firm in Winslow could have very well underbid and BIA would have been forced to award the contract. Now, that was a problem.

ACTING CHAIRMAN HORN. In other words, BIA has to take the responsible low bid; is that correct, on their contracting relationships, Mr. Wood?

MR. WOOD. Mr. Chairman, as I understand this contracting situation of this type, we're talking about the Buy Indian Act, which you no doubt may have heard of and under that act as I understand it, supposedly Indian-owned companies or individuals are supposed to get preference in contracting. In other words, you can negotiate with an individual or a company that is Indian-owned.

Originally, Washington wasn't fussy if it was 51 percent Indian-owned but I think they came out later with regulations wanting it 100 percent Indian-owned, but—in other words, the whole concept here of what we're talking about is Buy Indian Act. You see, preferential treatment to this company at Tuba City to get the school contract, laundry contracts. It's that simple. But there could be another Indian-owned laundry which would come into play which might underbid the Tuba City.

ACTING CHAIRMAN HORN. I see.

To your knowledge are there other Indian-owned laundries?

MR. WOOD. Yes, sir, there is one in Gallup, partly Indian-owned, and I think there is another one that Mr. Snell has mentioned.

ACTING CHAIRMAN HORN. Does it meet the requirements of BIA to be considered an Indian-owned laundry for preference?

MR. WOOD. Well, I'm out of my bailiwick and I shouldn't be talking, but I understand it's 100 percent Indian-owned. The one in Gallup wouldn't be 100 percent.

ACTING CHAIRMAN HORN. All right.

Mr. Glick, let's get that in the record also from the Bureau of Indian Affairs as to just why—what has been the historical evolution of administrative regulations and/or law and congressional committee interpretation and legislative intent as to how we define Indian-owned groups in order to determine their eligibility to bid under the Indian preference laws. I think this is very important that we lay down that record in writing.

[See Exhibit No. 12C for this information.]

MR. GLICK. That certainly will be carried out, Mr. Chairman, but I think even if there were an eligible laundry in Gallup that would qualify for the Indian preference it would seem to me to be hardly likely that it would be successful in bidding on a bid in Tuba City simply for the transportation costs because it's something like 175 or 200 miles. So that doesn't seem to me to be much of a practical consideration.

MR. WOOD. I was putting it out as a practical consideration.

ACTING CHAIRMAN HORN. Where is the laundry in Tuba City handled? Do we know?

MR. WOOD. No, sir, myself I don't know where.

ACTING CHAIRMAN HORN. Let's find that out for the record.

[See Exhibit No. 12D for this information.]

ACTING CHAIRMAN HORN. Any further questions, Mr. Buggs?

MR. BUGGS. No.

ACTING CHAIRMAN HORN. Any further questions, Mr. Glick?

MR. GLICK. Yes, I have one further question I'd like to ask Mr. Goldberg.

Do you think it might be conceivable that SBA might again send a representative to duty station here on the Navajo?

MR. GOLDBERG. It's one of the requirements that I have said I thought should be fulfilled to have a representative here. I also have asked them to take a long, hard look at changing the requirements. You see, the SBA doesn't make grants. I think in this particular case there should be a clause whereby a worthy applicant could be given a grant. This is a change in the rules and regulations because realistically there is no way that most of them, or hardly any of them, can come up with the minimum requirements that we require today of a minimum of 10 percent down to go into business. So, actually it's inoperable.

MR. GLICK. Am I to assume that female persons would be excluded from consideration for that position? I believe you did say that—

MR. GOLDBERG. I wouldn't say that they be excluded. We had an experience with a female loan officer and it just didn't work out and I asked several of the Indians why there was such a lack of progress and it was the statement to me that, well, they didn't want to deal with a woman. No, that's the only thing I am basing it on.

MR. BUGGS. Supposing you said, if you don't deal with her you won't deal with anybody?

MR. GOLDBERG. Well, I think that would cause some agitation. We weren't trying to agitate. I don't say that their feeling is correct. I'm merely saying that this was the statement that was made.

COMMISSIONER FREEMAN. May I speak to that?

ACTING CHAIRMAN HORN. I don't think we could stop you.

COMMISSIONER FREEMAN. No, that's absolutely right because

I believe that on the basis of the statement that you have said, that you have acquiesced in discrimination and probably a woman ought to be put in your job.

Mr. Goldberg. They have put a woman in the district directorship in one of the States of SBA very recently, and they probably will do more of this. There's nothing wrong with that. I can't see anything wrong with that.

Commissioner Freeman. But I believe we have to recognize that unless the persons in decisionmaking positions recognize their obligation that there be no discrimination on the basis of national origin and sex, that there will never be any solution. What I'm looking at is you people who are part of the problem.

Mr. Goldberg. Probably.

Commissioner Freeman. Thank you.

Acting Chairman Horn. Any further comments?

Gentlemen, we thank you for your testimony and the Counsel and Staff Director will follow up on the unanswered questions.

Let me just say that tomorrow morning's session will begin at 9:15 on the problems of private employment. We will also cover health care before lunch. After lunch we will begin on the problems of education which will carry over to Wednesday.

Following the recess of tonight's meeting Dr. Billison will be available for any members in the audience, as we announced earlier, who wish a summary in Navajo.

Until tomorrow morning at 9:15, the meeting is adjourned.

[At 6:45 p.m. the hearing was recessed, to reconvene at 9:15 a.m., Tuesday, October 23, 1973.]

TUESDAY MORNING SESSION

OCTOBER 23, 1973

ACTING CHAIRMAN HORN. The Tuesday session of the United States Commission on Civil Rights will begin. Let me just outline the schedule, ladies and gentlemen, for today.

This morning we will be discussing private employment on the Navajo Reservation with several panels from the office of Navajo labor relations, the Bureau of Indian Affairs contract compliance, as well as representatives of private employers.

There will be a break between 11:15 and 11:30, after which a special panel on health care will occupy the stand until 1:00 o'clock. The Commission will break from 1:00 to 2:30 for lunch, and we will then begin the last portion of the hearing which will cover all of the afternoon and tomorrow on education. And the various sessions on education and panels today will hopefully conclude approximately at 7:00 o'clock.

Tomorrow morning we'll begin at 10:00 o'clock and continue on education throughout the day until approximately 4:15 at which time there will be a discussion of an overview of the Bureau of Indian Affairs, some more education officials, and then, as we extended the invitation yesterday, there will be an open session at which anyone can testify, which will last from 6:00 to 8:00 o'clock on Wednesday evening.

If Mr. Brose, Mr. Arviso, and Mr. White will come to the stand we will swear the witnesses.

[Mr. Thomas H. Brose, Mr. Leonard Arviso, and Mr. Kenneth White were sworn and testified as follows.]

TESTIMONY OF MR. LEONARD ARVISO, BOARD MEMBER; MR. THOMAS H. BROSE, DIRECTOR; AND MR. KENNETH WHITE, CONTRACT COMPLIANCE OFFICER, OFFICE OF NAVAJO LABOR RELATIONS

ACTING CHAIRMAN HORN. Please be seated.

Mr. Alexander will conduct this portion of the questioning.

MR. ALEXANDER. Would each of you state your name, address, and position for the record, starting with Mr. Arviso.

MR. ARVISO. My name is Leonard Arviso, the manpower board for the Navajo Tribe, and I'm also a board member, board of directors of the office of Navajo labor relations.

MR. BROSE. My name is Thomas H. Brose, I'm director of the office of Navajo labor relations, Navajo Tribe.

MR. WHITE. I'm Kenneth White. I'm the contract compliance officer for the office of Navajo labor relations.

MR. ALEXANDER. Mr. Brose, most of this session will be spent discussing the Navajo preference clause and its implementation. Could you briefly state for us what that preference clause is?

Mr. Brose. As the Commission is probably aware, Title VII of the U. S. Civil Rights Act provides for Indian preference in Section 703(i), and I might for the Committee read that to the Committee—I'm still getting my records in order here—it reads as follows: "Nothing contained in this Title shall apply to any business or enterprise on or near an Indian reservation with respect to any publicly announced employment practice of such business or enterprise under which preferential treatment is given to any individual because he is an Indian living on or near a reservation."

Based upon that provision in the act of 1964 and based upon various provisions of statutory provisions in the Indian Reorganization Act, the Navajo Tribe as other tribes has attempted to assure that employment on the Navajo Reservation complies with the claims for Indian preference in employment.

Mr. Alexander. This is now a standard clause in all land leases of the tribe, I take it?

Mr. Brose. It has been—

Mr. Alexander. For employment?

Mr. Brose. It has been for some years although the wording in particular leases vary from lease to lease. Since March of 1973, at which time the board of directors of the office of Navajo labor relations promulgated guidelines for the utilization of Navajo labor, a similar clause has been in the guidelines under which this office operates.

In addition, the Office of Federal Contract Compliance, U. S. Department of Labor, through the Solicitor's Office, provided our office on September 10, 1973—I'll provide you with the document—an opinion in which it said that it is our opinion that the ONLR may legally append bid conditions of its own on federally-assisted construction contracts which impose upon the contractors a burden of hiring an all or predominantly Navajo work force.

Although the proposed ONLR guidelines have taken the goals and timetables approach utilized in comparable bid conditions, there is no objection to even stronger language requiring employment of Navajos to the maximum extent of their availability.

Mr. Alexander. Mr. Chairman, I would like to have both the guidelines of the office and the solicitor's opinion entered into evidence.

Acting Chairman Horn. It will be entered in. Is this an exhibit at this point?

Mr. Alexander. As an exhibit.

Acting Chairman Horn. Exhibit 13 in the record.

[The documents referred to were marked Exhibit No. 13 for identification and received in evidence.]

MR. ALEXANDER. Mr. Arviso, could you explain to us briefly the background that led to the creation of the office—this, the office of Navajo labor relations, I gather is a relatively new office in the tribe?

MR. ARVISO. Well, in 1971 when I came in with the Navajo Tribe, one of the things that I first had to do was to try to find ways to increase the Navajo employment. At that time a survey was made of the reservation where we showed better than 65 percent unemployment.

First, my attempt was to— In the normal process which has been done by the tribe in previous years was to bring together the various groups, including the States, the employers, the government agencies, and so forth, that would either provide or—provide employment or provide training opportunities. But the more I looked at these things, things didn't progress as we wished to.

At the same time a lot of problems kept coming into my office, different complaints, "there was a job over there I could qualify but I was denied," and these types of things that kept coming into my office. Also at the same time I read and I was made aware of the various plans that were being initiated throughout the country, such as the Philadelphia plan.

I proceeded to get various plans, took a view of it there, and asked questions whether the Navajo Tribe could also adopt a plan there. This I was told I could do. At the same time I was also made aware that there was such a plan with the Arizona State which provided 25 percent through the State. This did not, as I felt, meet our needs there because when we had the 65 percent or so unemployment, 25 percent that was provided by the State was in my judgment not sufficient.

MR. ALEXANDER. This is the State affirmative action plan you are talking about?

MR. ARVISO. Yes, sir.

MR. ALEXANDER. Before the effective operation of this office got under way would you characterize the enforcement of the preference clause prior to this office as unsuccessful or meager?

MR. ARVISO. Sir, to my knowledge, there were no provisions within the tribal structure as to how these preferences were promulgated or enforced.

MR. ALEXANDER. So it was a lack of enforcement situation?

MR. ARVISO. Right.

MR. ALEXANDER. Could you indicate briefly, prior to the Salt River project, which I gather has been the major construction on the western part of the reservation, and the Four Corners project, which was a major construction incident before this, the most previous one, what the level of Navajo employment was at the Four Corners project?

MR. ARVISO. In my attempt to find out what percentage of

Navajos were working at various projects—of course right at the time when I came in there, too, the Salt River project was beginning to flare up there, various complaints and so forth were coming in there. I believe Kenneth White could elaborate more on that in the area because he was one of the ones that started the complaints and so forth.

MR. ALEXANDER. Mr. White, why don't we do that right now. Could you give us some of the background of the types of complaints that were coming from Navajo workers and potential Navajo workers in this major construction project, the Salt River project?

MR. WHITE. Well, to begin with, the Salt River project had leased the land. In the agreement that was made between the Navajo Tribe there was Indian perference for local Navajo people, and the work had begun in 1970, September 1970, and in 1971, early 1971, it was going in full swing. Between January and April, early April, a lot of people have come in from different areas, including Navajos.

I started working there in 1971, January 1971, and several other people was involved in that— There were foreign people left and right, and they fired one Navajo man and replaced him with two or three Anglos, and around about the last part of March we began to try to do something about ourselves, the working people got together, a few of us, and said that this can't go on because we never have this like this before.

We follow contracts in various areas for many years, but we never had a problem like that. People had experience and everything. But they are still fired for inexperience, unqualified, or being absent one day, and all this and that, and whatever little mistake they make on the job site too, they were fired for that. And at the same time the company was bringing in their own men from Bullhead City, Nevada, where they have built—just complete another project.

So we organized ourselves that we do something about it and so through some legal advice from the DNA [Dinebeiina Nahiilna be Agaditahe], and then we found out that we have rights, you know. We have our rights. We are supposed to have a perference and the agreement was made with the Navajo Tribe at the beginning of the land lease. So we organized ourselves to where we were called Navajo Construction Workers Association, and then we made complaints, discrimination complaints against the company through EEOC [Equal Employment Opportunity Commission] and OFCC.

MR. ALEXANDER. At that time, in the early stages of the project, were there also problems with Navajos getting to jobs because of a variety of union practices? If so, either Mr. Brose or Mr. White, could you please describe those practices as they existed at that time?

MR. BROSE. Well, I could just describe them briefly, and I think submit to you a copy of the special investigation report that the Department of Interior, OEO [Office of Economic Opportunity], and OFCC prepared in January of 1972.

Briefly, the problem was that the existing contract and practices of most of the unions required that hiring hall procedures be used, and the hiring halls were in most cases in Phoenix or Flagstaff, both considerable distances from the project and especially considerable distances for those who worked at the project but who lived on other parts of the reservation.

MR. ALEXANDER. What would be the practical effect of the physical location of the hiring hall on Navajo employment?

MR. BROSE. Well, given the state of unemployment that Mr. Arviso has described to you and the transportation difficulties faced by many of the Navajos, the requirement that they go physically to the hiring hall did, in our view, discriminate extensively against Navajo potential employees.

MR. ALEXANDER. Now, your office entered upon a long stage of negotiations to try to alleviate this and many other potential and actual problems that existed for Navajo employment. I'd like to go through some of these things and identify the successes that you have had and the problems that still exist.

Starting with the cooperation that you have had from other Federal agencies in your efforts to enforce the Navajo preference clause as defined by your office, could you briefly give us an overview of the type of cooperation you have had from Federal agencies?

MR. BROSE. Well, I would say generally, not specifically to this problem but generally, that the cooperation of Federal agencies leaves much to be desired in a general way, and I'd be happy to elaborate that with regard to other instances on the reservation. However, with regard to this project, and I think Mr. Arviso could probably address it on a firsthand basis better than I can for the period of 1972 when I was not in office.

MR. ALEXANDER. Mr. Arviso?

MR. ARVISO. Let's see. Our first attempt to get together with the various personnel from the Salt River project was, I believe in March '72. Of course, the hearings where the Department of Interior was involved were held in January of '72, at least in my judgment when we met with the personnel from the Salt River project, Bechtel and so forth, I think the feeling and the cooperation at least were shown at our first meeting there.

Some of the things that we said we would do while we were negotiating prior to March were discussed at this March meeting there. A survey to look for additional Navajo workers was implemented and took place by the tribe and personnel from the Salt River project.

The board of directors of the office of Navajo labor relations did sit down prior to March at two or three occasions there to discuss various problems that we thought needed to be aired out and of course some agreements were made, but the thing that lacked and which the Chairman of the Navajo Tribe, Mr. MacDonald, insisted which we have not resolved yet is the definite schedule of increase in Navajo employment at the Page project.

MR. ALEXANDER. That is the question of the specific goals and timetables on the agreement with Salt River which is yet to be—

MR. ARVISO. Right. We have never come to any agreement on that. Other minor things which have been eliminated; there are still occasions of those same problems coming up. There's people having to go down to Flagstaff or other areas to sign up. Of course, our intent was that there should be no need for Navajos to go down to hiring halls there. They should be hired right at the gate as various positions become available.

MR. ALEXANDER. Has that been straightened out now?

MR. ARVISO. No, it has not been.

MR. ALEXANDER. How do Navajos now get hired on the project?

MR. ARVISO. They still have to go through the hiring hall in Flagstaff or Phoenix. The other areas are the same there. With New Mexico they have to go to Albuquerque or someplace else off the reservation to register.

MR. ALEXANDER. Can they now come directly to the office of Navajo labor relations for hiring and then be sent to the—is there now an intermediary step? Is there some way of alleviating that problem?

MR. ARVISO. I believe some attempts were made by Mr. Brose. I'll let him answer that question.

MR. BROSE. We have worked out a tentative arrangement by which an employee or potential employee in an identified craft for which there appears to be a vacancy at the project can be in a sense located by our office, but the steps following that still are the same. That is to say, a person would come to our office; we would make an initial determination based upon what he tells us as to whether he is potentially qualified for that position, and then he would go to the union hall.

We do have an arrangement where we can transport them to the union hall and then from there they go up to the plant. In most cases for the positions that have been identified by Bechtel particularly, they have been hiring the people after we send them to the union hall. However, lately we have had some difficulties on this.

MR. ALEXANDER. Okay. What other specific types of problems that were identified have been alleviated through the negotiation process? Is there a new method now for dealing with grievance procedures when a Navajo is about to be laid off or has a problem on the job?

MR. BROSE. No. Salt River project in August 1972, in what they call their program, did put forth a proposal for a grievance procedure which they indicated they would unilaterally follow. Our office expressed reservations about it and have submitted to them as part of the negotiations an alternative grievance procedure. However, at the present time, they are unilaterally using the other grievance procedure, and we have participated in it pending the resolution of this issue through negotiation.

MR. ALEXANDER. Have there been alterations in the termination policy that has been followed by the company since the negotiation?

MR. BROSE. Yes. In our last negotiation session the Bechtel Corporation did make changes in its initial termination policy, reducing the period during which a person is not eligible for rehire from 1 year to 3 years for a number—3 months, I'm sorry—3 months, for a number of specified infractions of company policy, including absenteeism, I think, misconduct, and lack of qualifications.

MR. ALEXANDER. All in all, this and other steps in the negotiation process, what impact has that had on the actual numbers of Navajos employed in this major construction project?

MR. BROSE. Well, since the investigation in 1972 there has been a substantial increase in the number of Navajos who do work at the project. However, there also has been a substantial increase in the total work force at the project. Our percentage of Navajos working on the project in relationship to the total amount of the work force has gone up by a small amount. I think from about 19 percent of the work force to I think presently it's at about 22 percent of the work force.

MR. ALEXANDER. This would, I take it, compare to the Four Corners project, however, favorably where there was an 8 percent level of employment for Navajo—

MR. BROSE. No, in the Four Corners project—and by that do you mean the construction of Four Corners?—it does compare favorably, yes.

MR. ALEXANDER. And at that time there was no enforcement procedure by the tribe; your office was not in existence?

MR. BROSE. That's correct.

MR. ALEXANDER. Mr. White, could you explain to us briefly some of the cultural problems that an employer has to be aware of in dealing with Navajo workers and the adjustments that you think are appropriate for an employer to make?

MR. WHITE. Well, being an Indian and a Navajo, the people—the white man don't understand the way the Navajo lives, you know. We have a livelihood that we make our living with also besides working elsewhere. A lot of people have cattle, sheep, and horses, and especially in the wintertime they have to take care of their homes with hauling wood and water and stuff like that. These things come around; this is our problem, and also we do have culture that we respect very highly that still exists on this Navajo Reservation with the Navajo people, and we do have ceremonies at various times from small 1-night ceremonies to 5-night to 9-night ceremonies, these kinds.

We still have yet and we still respect it. And we call them medicine men, Indian doctor, performs for various reasons for sick people and others, you know. These things have got to be respected. That's the way the feeling is by us Navajo people because a man might have gotten sick, got to be cared for, these things the white man's doctor can't cure.

At the same time in the summertime we do have school kids come home from schools and care for sheep and cattle and all that while we are working. But when they return to school, some places where mother and father are the only ones at home. The wife takes care of the daily chores of the livelihood. And these, we don't understand each other between the employer and the Navajo people. A lot of people do request for leave to take care of this, but when they overdo their leave—maybe they took off for 1 day and they had to go beyond that—and they get fired for that, and this has got to be respected some way that we could understand each other.

That's my feeling and we've been having a lot of problems with that and people have been fired for absenteeism lately.

MR. ALEXANDER. Would you consider these to be religious or cultural observances which people should legitimately be given time off for if they provide a reasonable notice to an employer?

MR. WHITE. Yes, I think so.

MR. ALEXANDER. Do you think any of the employers have achieved any understanding of this yet?

MR. WHITE. Well, if they don't understand, we'll have to make them understand in a way that is going to be respected.

MR. ALEXANDER. Mr. Chairman, I have no further questions at this time.

ACTING CHAIRMAN HORN. Mr. Rankin?

COMMISSIONER RANKIN. I'm not exactly an expert in labor relations, but I do have a few questions here that I want to ask any of you to answer. First, how would you characterize the board of which you are a member? Is it administrative, is it executive, is it—I just don't know how—your powers, I don't know how to characterize your agency.

MR. BROSE. Perhaps I can explain.

The office of Navajo labor relations was created by a tribal resolution which outlined a plan of operation which also was approved by the tribal council in 1972. This established a board of directors reportable to the labor manpower committee of the Navajo Tribal Council, and thus to the council.

The board of directors appointed me as director, administrative director of the office, and the plan of operation provides for the operation of an office responsible for negotiations, the establishment of clear policies regarding preference, the enactment of regulations for economic activity, and the enforcement of those provisions.

COMMISSIONER RANKIN. So it's an administrative body then primarily; it that right? Your body?

MR. BROSE. Right.

COMMISSIONER RANKIN. But you have other functions too?

MR. BROSE. Yes.

COMMISSIONER RANKIN. And you make guidelines; am I correct in that?

MR. BROSE. Yes.

COMMISSIONER RANKIN. What if nobody follows your guidelines? What can you do?

MR. BROSE. Well, the guidelines include in them a series of sanctions which range from administrative actions—that is to say, the declaring of a default in the contract by the lessee which we presume would then place in jeopardy the existence of the original contract, a number of sanctions involving the ineligibility of a contractor to operate on the reservation until such time as it does comply with these guidelines.

COMMISSIONER RANKIN. What if they don't follow your guidelines? Can you take the matter into court?

MR. BROSE. Yes.

COMMISSIONER RANKIN. Have you?

MR. BROSE. No.

COMMISSIONER RANKIN. Are you going to in the future, do you think, or are you just not going to follow that procedure?

MR. BROSE. No. If it's necessary I think that the office of Navajo labor relations would recommend to the chairman that we take such actions.

COMMISSIONER RANKIN. None of these problems have been judicial problems in your mind?

MR. BROSE. Well, I think potentially, many of them are. However, we think as an ongoing practice that it is preferable to establish compliance through negotiation with the companies and the guidelines, I might note here, have only been in effect since March 1 of this year. The contracts which we've been referring to generally existed prior to the enactment of these guidelines. So that the tribe's legal recourse is based upon the validity of the lease or an infraction of the lease by the leaseholder.

COMMISSIONER RANKIN. Well, you made the suggestion that they hire at the gate rather than at the union hall; isn't that right?

MR. BROSE. Yes.

COMMISSIONER RANKIN. They didn't follow it, did they?

MR. BROSE. No, they have not.

COMMISSIONER RANKIN. Is there anything you can do about that situation?

MR. BROSE. Well, there are a number of steps that we can take, but I guess, frankly, the reason why the tribe has come forth with these guidelines is because we have found that the reliance upon the good faith compliance with the original leases does not leave sufficient recourse for the tribe. The tribe is faced with the question of breaking the lease and stopping the employment, limited though it is, of Navajo employees. And it's not a very pleasant dilemma for the tribe to find itself in.

COMMISSIONER RANKIN. I'd like to ask Mr. White a question or two. You've gone into the termination of employment and have decided that in some instances there was discrimination against Navajos; am I correct in that, Mr. White?

MR. WHITE. Yes.

COMMISSIONER RANKIN. Do you know the percentage of terminations that really—where the termination has been based on discrimination rather than upon failure to perform duties satisfactorily?

MR. BROSE. We don't keep that on percentage basis. We have specific instances where we feel that the termination was based on a discriminatory act.

COMMISSIONER RANKIN. You think this discrimination is real. It's natural for a man to blame his firing on lots of reasons; isn't that right?

MR. WHITE. That is right, but it's still just like what I said, being an Indian and being discriminated from the beginning up to now, even as having a reservation—being on the reservation being discriminated too, as far as I can see, and being on a job such as we have on the reservation being discriminated--everywhere else we've been discriminated being an Indian. That's the way I feel so that answers your question; that's what it is.

MR. BROSE. If I may add, Commissioner?

COMMISSIONER RANKIN. Yes, I'm interested.

MR. BROSE. That it appears to us that the concession to companies operating on the reservation that they will make the rules regarding work procedures which in making those ignore the cultural facets which Kenneth brought up is, in our opinion, a prima facie case of discriminatory practices.

COMMISSIONER RANKIN. In an individual case of discriminatory termination, is there anything you can do about an— How do you go about if a man comes to you and says, "I have been discriminated in this"? Can you carry the case to the company for the man?

MR. BROSE. Well, this is the procedure which we usually follow. In other words, we use negotiation with the company over that instance.

COMMISSIONER RANKIN. About how many instances have you done this in the last few months?

MR. BROSE. Well, we have pending, I would say, in excess of 30 cases right now with a number of companies, not just with Salt River.

COMMISSIONER RANKIN. Thank you very much. I understand.

ACTING CHAIRMAN HORN. Commissioner Freeman?

COMMISSIONER FREEMAN. Gentlemen, my questions relate to the employment practices, and I'd like to direct your attention to the indenture lease Navajo units. I believe this is the Four Corners lease.

Yesterday when some of the witnesses were giving testimony I raised the question as to whether it would be considered desirable by the tribal council to include in the contracts a provision for training of management and professional individuals, and it was indicated at that time that the question should be put to, I believe, the gentlemen who are now giving testimony because this would be in your area. So, first of all, I would like, before directing your attention to the specific lease that I have, to ask if you will comment on that.

MR. BROSE. Well, as I stated earlier, when we promulgated the guidelines which are now in effect for new projects we included in them a provision which provides for an affirmative action policy by any contractor assuring that training, upgrading, and promotional opportunities will be provided by that contractor and that also includes a provision that this applies to the office and management staff.

COMMISSIONER FREEMAN. Is that provision in any contracts that have been executed recently?

MR. BROSE. Yes, it is.

COMMISSIONER FREEMAN. Which ones are they?

MR. BROSE. Well, the contract with Tuscon Gas and Electric, and it will be, as I said, there are a number of contracts under negotiation now which will include these provisions.

COMMISSIONER FREEMAN. I have in my hand the Salt River lease which is, I believe, was executed in 1969. It's a 50-year lease with option to renew at 25—for 25 years for the lease of approximately 1,700 acres at $90.00 a year. And the only provision with respect to employment of Navajos is paragraph 18, which includes, I suppose, the standard provision that has raised some questions and problems, and that is that all unskilled labor shall be employed from "local Navajos if available providing that applicants for employment as unskilled laborers meet the general employment qualifications established by lessees," also providing nothing with respect to training, nothing with respect to upward mobility at all.

Further, with no provision for termination or cancelation, which means that as to this kind of a lease, unless you would go through a rather cumbersome procedure of filing a dispute and taking it to the Secretary of Interior, it would be another 50 years from—let's say, another 46 years whereby the company could continue to exclude Navajos from any effective employment.

Has the tribal council—has your office made any recommendations to the tribal council for referring to the Secretary of Interior any proposals for a mutual revision of such a document?

MR. BROSE. Not to my knowledge, although the tribe has recognized the shortcomings of the old lease arrangements, and it is out of that that they created the office and came forth—we came forth with the guidelines.

I would further add that the pattern of leasing on the reservation and the provisions which you cite have been seen clearly by the tribal council and by the tribal chairman as being inadequate and not providing the protections which we need. We have, I guess, in a very large measure relied upon good faith on the part of contractors to initiate these kinds of things.

COMMISSIONER FREEMAN. I would like to ask, have the lessees in this case accepted the guidelines of your office?

MR. BROSE. No, they have not, based on the ex post facto nature of the guidelines and on the previous existence of the lease.

COMMISSIONER FREEMAN. Are you saying that unless they would agree to the guidelines that all such contracts, 50-year contracts or 75-year contracts, would be outside of the operations of your office?

MR. BROSE. I wouldn't make that statement because I think that we do have plans for, you know, along those lines, but at present we are faced with the necessity to negotiate based upon the lease.

COMMISSIONER FREEMAN. Do you have information as to the number of such contracts and such leases in existence, 50-year, 75- or 90-year leases that are in existence that do not—which in my opinion can claim—adequately provide for employment of Navajos?

MR. BROSE. All of those prior to the Tuscon Gas and Electric.

COMMISSIONER FREEMAN. Would you have a "guesstimate" as to the number?

MR. BROSE. I would say it is easily 100, including all the oil, gas leases and construction and operation leases that are currently outstanding.

COMMISSIONER FREEMAN. Well, of those 100, what would be the guesstimate with respect to the total employees covered by such contracts?

MR. BROSE. Well, we have about two and a half thousand employees on these projects, Indian employees, and—

COMMISSIONER FREEMAN. I mean the total employment of the company. You say two and a half thousand Indian employees; I'm talking about the total employment of all of the companies. If a company employs 6,000 people and 200 are Navajos, what I want to know is the total number of employees, non-Navajo and Navajo, of these companies.

MR. BROSE. That would range about four and a half thousand.

COMMISSIONER FREEMAN. The company as a whole employed on the Navajo Reservation?

MR. BROSE. Right.

COMMISSIONER FREEMAN. 4,500 employees?

MR. BROSE. Right.

COMMISSIONER FREEMAN. Of whom about how many are Navajo?

MR. BROSE. About 2,000.

COMMISSIONER FREEMAN. About 2,000?

MR. BROSE. Right.

COMMISSIONER FREEMAN. In a situation where the intent is that preference be given to Indians so that there is general violation by all of the contractors; generally, there's violation of this provision of the contract, and your response, I believe, to Dr. Rankin's question was that your office or the tribal council have not gone further to try to correct this situation?

MR. BROSE. Well, we have gone further. There's some serious problems which I think the Commission ought to know about. One, that in general the cooperation of Federal agencies has been lacking. The compliance agencies and particularly individual Federal agencies who have money invested or grants made for most of the projects that exist on the reservation, and that in these operations the equal opportunity offices of almost every Federal agency that I've dealt with are not aware and certainly are not effectively giving any attention to Indian preference. I could, if I may, give you a few examples I think which would make this very clear.

For instance, the Department of Housing and Urban Development resisted the inclusion of our documents and the preference provisions in contracts which they were letting to the Navajo housing authority last spring, and only when the U. S. Department of Labor Solicitor's opinion came down did HUD concede to us that we can put this document into Federal contracts on the reservation.

Federal agencies generally operate on a 20 to 25 percent minority participation in Federal projects, and I have gone to the assistant secretary level in at least three agencies, HUD, HEW, and FHA—I think they call it FHWA, the Federal Highway Administration—seeking some consistency between the goals and timetables that they require inserted into Federal contracts and the provisions of Indian preference which we think the 20 to 25 percent mocks.

Without exception, no Federal agency has voluntarily amended their goals and timetables in their own administrative procedures so that there is some relationship to a meaningful enforcement of preference reflected in the goals and timetables.

We think that preference means that you prefer Navajos, that where they are available—and given our unemployment situation we contend they are generally available—at least 60 to 70 percent of the employees in the whole work force should be, in our view, at this stage, a Navajo. Instead we find that the percentages hover around 20 percent.

COMMISSIONER FREEMAN. We are not surprised at the response with respect to the record of the Federal agencies. This Commission as early as 1970, I believe, in response to a suggestion from the Vice Chairman, conducted a survey of the role of Federal agencies in enforcing civil rights laws. We published our report. We found that 40 Federal agencies—of the 40 Federal agencies that we studied, not a single agency was adequately enforcing the Federal civil rights laws. We have made about three or four followup reports and although there's been slight progress, unfortunately the situation is pretty bad.

What we are finding out from your testimony, however, is that those Federal agencies are even worse than I believe our reports to date had recognized, and this is very disturbing because it means that the Federal Government is sort of in partnership with some private agencies that certainly would— Well, I don't want to use the term "rip off," but I think that some of the people have said that the Navajo Nation continues to be exploited and I think this is indicated.

MR. BROSE. Yes, it is.

COMMISSIONER FREEMAN. Well, it just seems that the Navajo Nation and the tribal council has a responsibility to exhaust its remedies under the existing contracts to be sure that they are doing all that they can do to cause the compliance with the paragraph 18, and yet unless they do so that they at least have not served their people well either.

MR. BROSE. Well, the dilemma that I think that the Navajo Tribe faces is that the avenue of negotiation is based upon a number of factors: One, as I described to you, the noncooperation of Federal agencies; two, the existence of leases which are not very specific, although I think to us they are clear as to preference, and the recourse to law which the tribe has but which as an extremely practical matter, given the limited resources of the Navajo Tribe, puts the tribe in a position whereas many people have mentioned to us said, "Well, why don't you go to court?"

Well, if you look at the people who hold leases on this reservation, we are talking about the Fortune 500. There are very few fly-by-night operators on this reservation, and that the funds and legal services available to these corporations mean, I think, unless one is extremely naive, that those companies will take this to the last course of legal relief, and that that means for the tribe, $200,000 to $300,000 in legal fees for each case. In many cases our employment of Navajos does not bring that kind of money into the general economy of the Navajo Tribe.

COMMISSIONER FREEMAN. Mr. Brose, what I'm saying is that I believe it is the duty of the Secretary of Interior, who approved this, that the Federal Government should put its weight behind seeking compliance and that if it does not do so that it is not carrying out its responsibility. I'm talking about the Bureau of Indian Affairs, the Secretary of Interior.

MR. BROSE. Well, again, I guess an example would be the best way of responding about our dilemma, and that is that the Bureau of Indian Affairs withheld approval of this office until September of this year—September 16 of this year, even though the council resolution was passed in early 1972, and the tribal chairman explained to you yesterday the effects of these delays and the great burden that they impose upon the Navajo Tribe's government and its regular obligation to function as a government.

ACTING CHAIRMAN HORN. I take it from that comment that the Bureau of Indian Affairs approved this office after they heard the United States Commission on Civil Rights was going to hold a hearing?

MR. BROSE. Well, no, I think they approved it—

ACTING CHAIRMAN HORN. We find that we get a little action that way.

MR. BROSE. —after the acting director of the Office of Federal Contract Compliance had already approved our guidelines and after the BIA had approved two budgets.

ACTING CHAIRMAN HORN. Do you have any further questions?

COMMISSIONER FREEMAN. No.

ACTING CHAIRMAN HORN. I would like paragraph 18 of the Salt River lease entered into the record as an exhibit, Mr. Alexander, at this point in the remarks.

MR. ALEXANDER. As an exhibit?

ACTING CHAIRMAN HORN. As Exhibit 14.

[The document referred to was marked Exhibit 14 for identification and received in evidence.]

ACTING CHAIRMAN HORN. Mr. Ruiz?

COMMISSIONER RUIZ. Mr. Brose, there are many Christian calendars which contain not only the religious holidays but even the saints' days. Have you made lists of the religious ceremonial days to which Mr. White has referred and made the same available for contractor's calendars that labor absenteeism may be provided for in the regular course of the duties of the employee?

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MR. BROSE. No, we haven't made lists. However, I would say that the major employees on the reservation are aware of significant dates during which the Navajo Tribe celebrates some of its events, and that Mr. White could probably speak to what he might explain in a special nature of ceremonies and events which are not scheduled according to a calendar.

COMMISSIONER RUIZ. Don't you think that would be advisable so it would be on the contractor's calendar and so that special provisions could be made available not only to the employer but employee as well?

MR. ARVISO. May I respond to that?

I don't think the Navajos could establish such holidays as you've mentioned because the ceremonies that Mr. White mentioned are religious ceremonies that are performed, healing ceremonies that do come up at various times—none of them are scheduled. They are set up to perform, to be performed on an individual basis. So there's no way that I know we could schedule any of these ceremonies that take on any specific days.

COMMISSIONER RUIZ. I see. Another question. The Department of Labor has funded millions of dollars for manpower training programs to comply with the needs of industry. Now, these are not Government agencies but are private citizen, volunteer groups, nonprofit organizations that have been funded to the tune of millions of dollars, and these are located in Arizona, New Mexico, Colorado, and Utah. Is there anything which has prevented you from the recruitment of Navajos for training purposes, manpower training programs?

MR. ARVISO. In respect to training, funds received by various Federal agencies, prior to my getting into the act of trying to establish enforcement of Navajo employment, the trend has been that Navajos seeking additional education or additional training were, I would say, in most cases when they completed a program, were denied employment.

I think the problems that I could mention are the procedures maintained by the employer, the union, the qualifications, which in most cases we feel are not related and in many cases have prevented our members to go from training into employment. So the money that the Federal [Government] has put onto the reservation were mostly looked at as subsidy that—so, in reality, Navajos went from training programs to training program just to survive. I think these are some of the things that we have noticed which have made us realize that something had to be done and, therefore, these guidelines were initiated.

We also plan to pursue in other areas. The reason why we went with the construction activities, we felt that a lot of the programs that have been here on the reservation were geared to that in those particular areas, construction. There's been a lot of home improvement that has been going on on the reservation. This is where I would say the majority of our training programs have been placed, sir.

COMMISSIONER RUIZ. Do you know of any contractors specifically who have attempted to communicate with training centers, saying, "We want people trained along this line," setting forth the guidelines, so that the training manpower, funded training setup, could comply with the request by the contractor?

MR. ARVISO. Yes, I would say a number have, but again, we run into other problems which kind of limits us and these are regular—again, guidelines that the Department of Labor or OEO initiated. Their concept of training people is to of course get them enrolled, pay them a few subsistence for a few months, get them—tell them what's available, and then get them right on through there. And of course—

COMMISSIONER RUIZ. You mean they don't train them correctly?

MR. ARVISO. There's not enough time where we could fully train persons with various skills.

COMMISSIONER RUIZ. Have you any statistics with relation to the number of people that have been referred by manpower training organizations to contractors?

MR. ARVISO. This past year I believe about four or five thousand.

COMMISSIONER RUIZ. And if they have referred four or five thousand, have four or five thousand been employed by the contractors?

MR. ARVISO. I didn't quite understand that last question, sir.

COMMISSIONER RUIZ. Well, maybe I didn't explain the first part of my question well. Have you any statistics indicating the number of trained personnel out of the manpower training programs which have been referred to the employers? Have you any statistics of the number? I think you said that they trained them and nothing happened. Now, I ask you if you have any statistics as to the number that have been referred for employment?

MR. ARVISO. Yes. Not here available to me but I can get those figures made available there.

COMMISSIONER RUIZ. I believe you answered that there were approximately 5,000 employees that have been referred. Now, did you understand the question?

MR. ARVISO. I've said that there's been approximately 5,000 that have been referred to employers who were not hired.

COMMISSIONER RUIZ. This is what I wanted to know. You do have those statistics. Will you make those statistics available for an exhibit in this Commission, of those that were referred and not hired?

MR. ARVISO. I'll have to get them from the office.

COMMISSIONER RUIZ. Mr. Chairman, will you—

ACTING CHAIRMAN HORN. It will be entered as Exhibit 15, the number of employees that were referred and the number of employees, and the status of that, were they hired or weren't they; if there's any pattern or reasons, let us know that. General Counsel will follow up.

[The information referred to, to be marked Exhibit No. 15 for identification, was received in evidence.]

ACTING CHAIRMAN HORN. Any further questions, Commissioner?

COMMISSIONER RUIZ. No further questions.

ACTING CHAIRMAN HORN. All right.

Mr. Brose, let me run through a few of these things so it's clear in my own mind. It might be repetitive in part. Let's first get clear as to what court we are talking about on enforcement. Are we talking about the Federal district court or are we talking about any of the Navajo courts on enforcement of any of these items?

MR. BROSE. The Navajo tribal court.

ACTING CHAIRMAN HORN. The Navajo tribal court. It has jurisdiction over a lease and contract like this?

MR. BROSE. Okay. I thought you were talking about—

ACTING CHAIRMAN HORN. I'm talking about a violation of the Navajo preference clause.

MR. BROSE. Okay. the Federal courts would have jurisdiction.

ACTING CHAIRMAN HORN. All right. It's the Federal district court in the State in which the project is located, presumably, or, counsel, would it be where the tribal capital is?

MR. ALEXANDER. I don't know.

ACTING CHAIRMAN HORN. All right.

MR. BROSE. Generally speaking, the Navajo Tribe is considered in the ninth circuit rather than in the circuits in the States for which the circuits are generally divided up, so that the reservation is treated as a whole. All cases run through the ninth circuit.

ACTING CHAIRMAN HORN. Well, that's true, but the point is the initial case would be in the Federal district court, I assume, for either New Mexico, Arizona, or Utah, depending upon where the contract is?

MR. BROSE. Right.

ACTING CHAIRMAN HORN. Now, I'd like to ask counsel, do we know or can we prepare a legal opinion as to which level of the Federal executive branch this particular preference clause is enforceable? Is it the Bureau of Indian Affairs? Is it the Office of Federal Contract Compliance? Is it the Attorney General of the United States through Title VI of the Department of Justice? Just what are the options here? Do we know at this point?

MR. ALEXANDER. We will have to get that.

Acting Chairman Horn. All right. I'd like the counsel to enter a memorandum in the record that tries to get at that question as to just what is the recourse under this contract.

Now, let's go back to hiring halls. I'm rather fascinated. Mr. Brose, as I understood your testimony earlier, you felt things were being worked out with the unions. Then it came up halfway through the hearing from another individual testifying that really the experience wasn't so good on hiring halls. Now, I don't understand some things and I'd like to just go through with you the law on this. Presumably, Arizona is a right-to-work State under Section 14–B of Taft-Hartley?

Mr. Brose. Right.

Acting Chairman Horn. Why is it— Well, are you saying that Navajos have to join the union before they are referred to the job site or do they merely have to go to the hiring hall; they do not have to be union members, they are then referred to the job site and if they are hired they then have to join the union? Or do they have to join the union at all?

Mr. Brose. Well, I think that the tribe's practice in the last several years has been to take no position with regard to whether or not a contract involves a union or whether it is a nonunion contract. In those cases where there is a contract the tribe has allowed the companies to proceed with their regular procedures based on their collective bargaining agreement unless that procedure worked to the disadvantage of the Navajo people.

Now, in my earlier comments I pointed out that according to the special investigation report of the Department of Interior that indeed the practices of the companies and the unions were discriminating against Navajo employees or potential employees. As a result of the investigation report and as a result of activities by our office, with the exception of the electrician's union, our office has not been denied a placement as a result of a union refusing to send that person to the job. In other words, by using the hiring hall practice.

None of the companies to my knowledge have voluntarily expressed a willingness to achieve a change in the collective bargaining agreement so that they could be hired directly at the gate and, with regard to the Salt River project, when persons report to the gate they are then referred to the union by the personnel department at that site.

Now, I would further clarify it a bit by saying that the way in which we would find out that this caused the problem would be for a Navajo employee to come to us and say, "I went to see about a job; I went to the union and I wasn't sent up." We currently have such an instance at the Bechtel Corporation with regard to the boilermakers.

Acting Chairman Horn. So they went to the boilermakers' union hiring hall and they were not referred to the construction site. Is that it? Or to the plant?

MR. BROSE. Right. Well, we received a job order notification from the company that they would hire boilermakers. We then sent a boilermaker to the boilermakers' union. When he arrived at the union in Phoenix he was told that the company had canceled the order. So the employee, who is still not hired, was not employed. The boilermakers' union were complying with the company's cancelation even though the company had told our office that they were hiring boilermakers.

ACTING CHAIRMAN HORN. Did you check back to see if the company had indeed canceled the order?

MR. BROSE. Yes, I did and their officer told me he had, and we protested it and we currently have filed a grievance with the company using their grievance procedure.

These procedures that we follow are not the ones which we want. The situation, however, is that as long as the Navajo Tribe has been willing to negotiate these matters with the company, we do have to depend upon their good faith efforts to negotiate and to eliminate practical problems that result from company and union policies.

At this stage we are still, as I said, negotiating this. Our recourse to the OFCC and the EEOC has not been taken because the company officials assured us that they would look into this immediately and currently an inquiry is going on.

ACTING CHAIRMAN HORN. Do you know if the companies that have leases from the Navajo Tribe are basing their labor relations on their national collective bargaining contracts that affect—like Bechtel—that affect their national operations, or are these local contracts they have entered into with the union?

MR. BROSE. I believe Bechtel is a national contractor and has a national agreement.

ACTING CHAIRMAN HORN. I see. So when they come to a right-to-work State like Arizona they are essentially abiding by collective bargaining agreements that have been made to deal with labor relations in non-right-to-work States?

MR. BROSE. Correct.

ACTING CHAIRMAN HORN. Let me ask you, does the Arizona law on right-to-work at all apply, since this project is on a Federal reservation where most State laws do not apply? Do you know if that applies at all?

MR. BROSE. Well, there is a tribal council law in the tribal code which does say that the tribe is a right-to-work area.

ACTING CHAIRMAN HORN. In the same connotation as that word is used by the State of Arizona.

MR. BROSE. Yes.

ACTING CHAIRMAN HORN. Now, let me ask you along the line of Mrs. Freeman's question, which was a very good one as to training, upward mobility et cetera, have you drawn up model contract language, boilerplate, if you will, that can be automatically inserted in all future contracts along the lines of her question?

Mr. Brose. Yes.

Acting Chairman Horn. Are those in the guidelines that we have entered into the record as an exhibit?

Mr. Brose. Yes.

Acting Chairman Horn. Have you written the unions suggesting various reforms in the way they operate?

Mr. Brose. Yes. In May of this year I wrote all the unions in New Mexico, Arizona, and Utah a letter in which—since we knew that the contracts were coming up for renegotiation, we wrote every union informing them that—in a letter of May 16th, which I would be happy to enter into the record—

Acting Chairman Horn. I'd like that entered as Exhibit 16.

[The document referred to was marked Exhibit No. 16 for identification and received in evidence.]

Mr. Brose. —pointing out the unemployment and asking, one, that each union recognize Indian preference on the reservation and the guidelines for the utilization of Navajo manpower, that each union establish a Navajo list for jobs on the reservation, that each union insert into its agreement a special section regarding the reservation which only the Arizona pipe trades now have in their agreement, that each union recognize the need for our office to be informed prior to or at least simultaneously with notification of any local union about labor needs on reservation projects, that they establish means for transfer of Navajo workers from projects on the reservation in one State to projects on another, and that each union will arrange for Navajos who are in approved training programs to be able to seek enrollment in another state where such programs may be going on, and that each union will actively strive to enroll Navajos in apprenticeship programs.

Acting Chairman Horn. Mr. Brose, let me ask you—I'm still not clear on after the hiring hall refers—or, the Navajo goes to the hiring hall; he then is cleared for the employment by the particular corporation. Does the Navajo then have to join a union or does he pay an agency shop fee or what?

Mr. Brose. I believe it varies a bit from company to company, but in general he joins the union.

Acting Chairman Horn. Because of the company's collective bargaining agreement, despite your own right-to-work law on the reservation and the Arizona right-to-work law?

Mr. Brose. Right.

Acting Chairman Horn. I can see where maybe he could be compelled to join an agency shop, and there isn't much difference; he pays the same fee usually. But I must confess I don't quite understand that and I wish counsel would explore just what the applicable law is and let us have that for the record also.

Any further questions?

Mr. Buggs?

MR. BUGGS. I would just like to raise the question as to how do you go about letting the company not adhere to the tribe's right-to-work law? Doesn't anyone ever raise that question with them?

MR. BROSE. Well, I would say that our policies of our office are based upon current policy of the tribe and, as I understand it, current policy of the tribe is not to enforce the right-to-work law. I may stand corrected, but I have been given no information to the contrary.

ACTING CHAIRMAN HORN. Wait a minute. Excuse me. I thought you just told me they have a resolution in which the tribe has adopted a right-to-work law. You say that the tribe passes policies that they don't enforce?

MR. BROSE. Well, we have not—our office has not had a complaint from individual Indians that their rights to work have been infringed upon.

MR. BUGGS. This wouldn't be a sweetheart arrangement between the tribe and the union, would it?

MR. BROSE. Well, not consciously so. As I pointed out, the unions have complied with our requests for Navajo lists and that this has, in our view, to date, been a satisfactory arrangement. That is to say, that they have in each of the unions a list of non-Indian members and a list of Indian members and that, when an employer on the reservation requests of the union that it needs employees off the out-of-work list and it is on the reservation, that Indians will be sent to that job.

MR. ARVISO. I would like to comment just a little bit on what I feel the position of the tribe is here. When that resolution was initiated and passed, where the reservation has the right-to-work area there, I think we still feel the same way. A Navajo going to work on the reservation shouldn't have to be required to join the union, and I would sense right now that in most cases, in fact I would say all cases, it's his only avenue so he has to join the union.

So I think what we are doing right now is that we're seeing that the Navajo members need a job here, what we're doing is only compromising and what we really want to accomplish is not happening there. We are continuously being pushed back, gradually.

COMMISSIONER FREEMAN. Could you, Mr. Brose, describe for us the situation with respect to the electricians' union? I believe you made an exception there.

MR. BROSE. Well, we have had instances where we have sent persons who have represented themselves to us as being capable of doing journeymen work as an electrician, to the electricians' union, and they were not afforded enrollment on the rolls of that union. And we again are in the process of carrying this objection to various governmental as well as various union officials for resolution.

I would comment, I think that the question that the Chairman raised is a very good one and I think Leonard's response perhaps in a few words encapsulated part of our serious difficulty that this office has, and that is that our dealing with negotiations of new contracts and the compliance activities with regard to ongoing contracts with a staff of two compliance officers and myself occupies most of our time, and that, in a sense, larger questions which need to be resolved get pushed into the background, and that one of these days we'll catch up and then we'll get to those. I think that the efforts of our office have been mainly to redress actual grievances that have occurred on the job or to assure that companies have been complying.

As I said in my earlier remarks, the Federal agencies with which we deal have taken up a tremendous amount of our time. It took us 5½ months to get the Federal agencies to, I think, begrudgingly acknowledge the existence of the Indian preference clause in Title VII and to get some action out of the OFCC directing Federal agencies to comply with this. And as of this date we still do not have a broad directive from the OFCC telling all the Federal agencies that preference is the law.

COMMISSIONER FREEMAN. With respect to the electricians' union, have you filed a complaint against the electricians' union with the office of OFCC?

MR. BROSE. We have informed them that we intend to file such if the policy is not changed.

COMMISSIONER FREEMAN. How long ago did the incident occur where the electricians' union rejected the persons whom you had referred to them?

MR. BROSE. September, about September 9th.

COMMISSIONER FREEMAN. What specific steps have you taken since then?

MR. BROSE. I have met with the representatives of the electricians' union, and I'm meeting again with them the first week in November to discuss this particular matter.

COMMISSIONER FREEMAN. What, Mr. Brose, is there to discuss with respect to a Navajo who is an electrician who is being excluded and who has been excluded from a job as an electrician?

MR. BROSE. Well, our position is simply that he must be allowed to be a member of the union.

COMMISSIONER FREEMAN. My concern, however, is that the construction will be over and he still would not have been employed.

MR. BROSE. Well, this construction happens—the job for which he is applying still has 3 years to go. I appreciate that comment because it's a general dilemma which we face and that is that each delay—the negotiations with Salt River have now been going on for a year and a half and each delay takes away workdays that Navajos will never have.

COMMISSIONER FREEMAN. Of course, one interesting question here is—and it came up yesterday since testimony was brought out that the Navajo Nation isn't really a State or a county and that's one of the problems why you don't get proper allocations, and I'm inclined to feel that one of our recommendations ought to be that those laws be changed so that you are eligible just as a State and a county, but when you get to the Taft-Hartley Act of 1948, you have under Section 14–B the option for a State to in a sense opt out from national labor policy.

National labor policy is essentially a union shop whereby an individual can join or can take a job, be employed without joining a union, but must join it in 30 days. However, under 14–B a State can pass a law which bans the union shop just as the National Labor Relations Act banned the so-called closed shop.

I just wonder, legally, whether the Navajo Nation can really adopt a so-called right-to-work act which is enforceable if they are not a State. Now, granted they are in the State of Arizona, but State law doesn't apply here. Federal law has essentially said, "We have a union shop policy unless the State opts out." I think this is a very interesting legal question.

I really don't care whether you have a closed shop, union shop or open shop, that's your business. What I am trying to get at is, if you have that policy and if it's legal, it ought to be in a model contract and it ought to be enforceable. That's all I really care about. To what extent are you able to carry out the policies the tribe has adopted?—whether I agree with the policies personally is beside the point.

MR. BROSE. Well, I think our answer is that we attempt to carry out the provisions of the tribal code but that some provisions, as I understand it, are open to question. The labor and manpower committee has requested of our office that we redraft the labor code and we are currently doing that. However, it is up to the tribal council to decide whether or not it wants—what provisions of the old code is wishes to keep in. And of course, the question you raise is one which I certainly can't answer and which only the tribal council and the general counsel of the tribe can properly address.

ACTING CHAIRMAN HORN. Mr. Alexander, any further questions?

MR. ALEXANDER. No.

ACTING CHAIRMAN HORN. If not, thank you very much, gentlemen, for joining with us. We appreciate having your testimony.

Will Mr. Robert Dudley and Mr. Thomas Brandt please come forward.

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[Mr. Robert A. Dudley and Mr. Thomas G. Brandt were sworn and testified as follows.]

TESTIMONY OF MR. THOMAS G. BRANDT, PROPERTY AND SUPPLY OFFICER, NAVAJO AREA OFFICE, BUREAU OF INDIAN AFFAIRS, GALLUP, NEW MEXICO, AND MR. ROBERT A. DUDLEY, ACTING CHIEF, DIVISION OF FACILITIES ENGINEERING, BUREAU OF INDIAN AFFAIRS, ALBUQUERQUE, NEW MEXICO

ACTING CHAIRMAN HORN. Please be seated.

I understand that you wish to submit a statement on any—well, my understanding from counsel is that the last panel, Mr. Brose, would like to submit a statement on various questions that came up in this testimony. That is perfectly appropriate. The record is open for 30 days to any witness.

Mr. Alexander.

MR. ALEXANDER. Mr. Dudley and Mr. Brandt, would you both give your names for the record and your addresses and your current positions with the BIA?

MR. DUDLEY. My name is Robert A. Dudley. I am employed by the Bureau of Indian Affairs as the acting chief of the division of facilities engineering, and my address is Post Office Box 1248, Albuquerque.

MR. BRANDT. My name is Thomas G. Brandt. I am employed by the Bureau of Indian Affairs, Navajo area office. My title is area property and supply officer and, as such, I am the contracting officer for this area. The address is Post Office Box 1060, Gallup, New Mexico.

MR. ALEXANDER. Both of you, as major contracting officers for the BIA, what is the level of contracts that each of your offices supervises on a yearly basis? What kind of dollar amount are we talking about?

MR. BRANDT. Total dollar value?

MR. ALEXANDER. Yes.

MR. BRANDT. Last year, in the Navajo area, all purchases, contracts—that is, formal contracts on the open market—purchases amounted to about $60 million.

MR. ALEXANDER. Okay. Now, the contracts that you issue with private companies, do they have any clause that is similar to the Navajo preference clause that was just described?

MR. BRANDT. We have, in our solicitations and in our contracts, the preference to local residents clause.

MR. ALEXANDER. And that, basically, is interpreted as to people on the reservation?

MR. BRANDT. That is right.

MR. ALEXANDER. Effectively, that is a Navajo preference clause, is it not?

MR. BRANDT. We intend it to be that way and we so explain it in our preconstruction conferences with the contractors before work begins.

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MR. ALEXANDER. How do you implement that clause? What are the steps that your offices follow? Do you require daily or weekly or pay period reporting forms on the number of Navajos employed on each of the jobs, each of the contracts that your office supervises? I would like you both to answer that.

MR. DUDLEY. We have project engineers, residents, on our construction jobs, and they provide a daily record of the total number of employees and an identification of the number of Indian employees.

MR. ALEXANDER. How do they do that? Is that a sight count? Mr. Brandt, would you answer that question also?

MR. BRANDT. I am not sure that we, anymore, have a breakdown on the—that is, a reporting system that provides this information. I believe the payrolls which are submitted by the contractor to our office, as a part of their monthly report for payment, includes the ethnic breakdown.

MR. ALEXANDER. Could you repeat that? I could not quite hear you.

MR. BRANDT. I believe the payrolls, the payroll submittals which the contractor makes to our office, show an ethnic breakdown.

MR. ALEXANDER. Could you submit a payroll voucher for the record? When our staff interviewed you previously, we were unable to obtain a payroll sheet that had an ethnic breakdown on it. Will you please have one?

MR. BRANDT. I will furnish one to the Committee. I think it shows that.

MR. ALEXANDER. You think. Are you not sure?

MR. BRANDT. I am not positive. At one time, it did. I am not sure it still does.

MR. ALEXANDER. As a contracting officer, do you review these payroll slips?

MR. BRANDT. I don't personally review them.

MR. ALEXANDER. Who—

MR. BRANDT. I have a staff that does.

MR. ALEXANDER. Who is responsible for the enforcement of the local preference clause?

MR. BRANDT. I am ultimately responsible.

MR. ALEXANDER. But you do not review them. Mr. Dudley—

ACTING CHAIRMAN HORN. Excuse me. Mr. Alexander, will that be an exhibit, then, at this point?

MR. ALEXANDER. Yes, it will.

ACTING CHAIRMAN HORN. Exhibit 17 then will be the payroll sheets as furnished by the contractors.

[The documents referred to, to be marked as Exhibit No. 17 for identification, were received in evidence.]

MR. BRANDT. You want any payroll for any contractor, just a typical payroll sheet?

MR. ALEXANDER. Yes, that has the ethnic breakdowns.

And the ethnic breakdowns that you require, Mr. Dudley, do they require a skill inventory?

MR. DUDLEY. I'm sorry. Our payrolls do not require an ethnic breakdown.

MR. ALEXANDER. Now, who gives you your ethnic breakdown?

MR. DUDLEY. They come from the personal observation of our inspector on the job.

MR. ALEXANDER. A sight observation?

MR. DUDLEY. Yes.

MR. ALEXANDER. Does he do a sight observation by a skill breakdown?

MR. DUDLEY. I believe that he does.

MR. ALEXANDER. How do you tell a Navajo from a Chicano? Mr. Arviso, who was up there a few moments ago, might very well pass for a Chicano. I have been taken for a Navajo at least 20 times this week.

MR. DUDLEY. Actually, it is what comes after you have been on the job. You come to know the people and what—

MR. ALEXANDER. Do your contractors file affirmative action plans?

MR. DUDLEY. Yes.

MR. ALEXANDER. Are there specific goals and timetables that they are to achieve in employing local residents?

MR. DUDLEY. Within the State of Arizona, at the moment, we are required to adopt the Arizona plan.

MR. ALEXANDER. You are required by whom?

MR. DUDLEY. By the—it is a requirement of the Federal Government.

MR. ALEXANDER. Now, this is the Arizona plan that was criticized by Mr. Arviso as having an employment goal of approximately 20 or 25 percent of Indian employment, minority employment?

MR. DUDLEY. That is correct.

MR. ALEXANDER. Do you think that the Arizona State plan conflicts with the Indian preference as required by Federal law?

MR. DUDLEY. In addition, we have the local preference clause which we do—

MR. ALEXANDER. Do you, therefore, upgrade the goal that you require from the contractor?

MR. DUDLEY. Yes, we try to.

MR. ALEXANDER. What kind of goals do you require for laborers?

MR. DUDLEY. Our ultimate goal, of course, would be 100 percent employment.

MR. ALEXANDER. How many people are employed under the contracts that you supervise?

MR. DUDLEY. At this—are you talking about the ones that we have under contract at the moment?

MR. ALEXANDER. At the moment.

MR. DUDLEY. At the moment, actually I don't have a single one under contract on the Navajo except for a small well drilling contract, two people.

MR. ALEXANDER. Mr. Brandt, you supervise some $60 million worth of contracts. How many Navajos are working on those?

MR. BRANDT. I don't know that. I could get that information.

MR. ALEXANDER. Yes. I would like that provided for the record as an exhibit, Mr. Chairman.

ACTING CHAIRMAN HORN. Exhibit 18 will be the number of Navajos working on contracts under the jurisdiction of this branch of the Bureau of Indian Affairs.

[The documents referred to, to be marked as Exhibit No. 18 for identification, were received in evidence.]

MR. BRANDT. The number of Navajos?

MR. ALEXANDER. The number of Navajos by skill.

Recently—the panel just previous—one of the issues raised was training for skilled positions and managerial positions. Do either of your affirmative action plans require contractors to provide for training, upgrading, and similar items?

MR. BRANDT. We have no such provision in our contracts.

MR. ALEXANDER. You have no such provisions in your contracts. Mr. Dudley, I understand, nationwide, that your office is responsible for contracting for school supplies. Is that correct?

MR. DUDLEY. No. For construction of schools.

MR. ALEXANDER. All construction for schools?

MR. DUDLEY. Yes.

MR. ALEXANDER. That is a rather substantial program, I take it.

MR. DUDLEY. Yes, it is.

MR. ALEXANDER. Do you get breakdowns in these contracts? Do you have—

MR. DUDLEY. Yes, we do have.

MR. ALEXANDER. —these, by skills.

MR. DUDLEY. I don't have them here by skills.

MR. ALEXANDER. How are these obtained? Are these obtained from the contractors or again on a sight basis?

MR. DUDLEY. These are obtained on a sight basis, and we do compile these. I do have some information—

MR. ALEXANDER. Fine.

MR. DUDLEY. —about percentages of Indian employment. I can't identify them by name or—

MR. ALEXANDER. Now, these are nationwide, I take it.

MR. DUDLEY. I have some for the Navajo, particularly since 1965, which indicate the percentage of Indian employment for 1, 2, 3, 4, 5—for 13 projects which vary in location from over near Blanca to Shonto to Tuba City, throughout the Navajo, and which vary from a minimum of 12 percent to a high of 52—58 percent of Navajo—of Indian employment.

ACTING CHAIRMAN HORN. How did you arrive at those 13 projects?

MR. DUDLEY. Well, these are contracts that we have had.

ACTING CHAIRMAN HORN. Are those all the contracts that you let in that period?

MR. DUDLEY. Since 1965.

ACTING CHAIRMAN HORN. So this is a total universe and these are the statistics based on that?

MR. DUDLEY. Yes.

ACTING CHAIRMAN HORN. Fine. Can we get that then—

MR. ALEXANDER. Yes.

ACTING CHAIRMAN HORN. —in the record?

MR. ALEXANDER. Can we have a copy?

ACTING CHAIRMAN HORN. And that will be Exhibit 19.

MR. DUDLEY. You bet.

[The documents referred to were marked as Exhibit No. 19 for identification and received in evidence.]

MR. ALEXANDER. Mr. Brandt, it is your office which does school supplies, I take it, is that correct?

MR. BRANDT. Yes, sir. And I wanted to clarify on the point of that $60 million. That's not all construction, by any means. It's all types of procurement.

MR. ALEXANDER. And school supplies—but that is still a rather substantial sum of money.

MR. BRANDT. We buy supplies. We contract for personal services. We buy almost anything you can think of; food—

MR. ALEXANDER. In your contracts for services and for school supplies, do you require, from the suppliers, breakdowns on minority employment, particularly Indian employment?

MR. BRANDT. No, sir, we don't.

MR. ALEXANDER. You do not require such?

MR. BRANDT. No. These are advertised contracts, and the suppliers are located all over the country.

MR. ALEXANDER. On what basis do you— Do you have any in the Gallup area?

MR. BRANDT. Yes. We buy most of our produce, for example; fresh produce is bought in the Gallup area because that's our only immediate source.

MR. ALEXANDER. Most of your fresh produce for the boarding schools is bought in this area?

MR. BRANDT. Yes.

MR. ALEXANDER. Do you check on those suppliers to see what their Indian employment practices are? Under anybody's standards, Gallup, New Mexico, is on or near the Indian reservation under Title VII.

MR. BRANDT. We have no formal check on them. I know they employ Indians.

MR. ALEXANDER. Is that your local office policy, or does that come from the Secretary of the Interior, or is that something you have determined as local office policy?

MR. BRANDT. You mean that we do or do not check?

MR. ALEXANDER. That's correct.

MR. BRANDT. As I say, these are advertised contracts and on the competitive market. We don't check—

MR. ALEXANDER. These have a standard—I would take it, as all contracts of the Federal Government, these have a standard equal opportunity clause in them?

MR. BRANDT. Yes.

MR. ALEXANDER. Well, how do you enforce it?

MR. BRANDT. In supply contracts, that's pretty difficult to do.

MR. ALEXANDER. Well, if you buy from the same produce company, I assume that these are for substantial amounts of money over a period of time.

MR. BRANDT. Yes.

MR. ALEXANDER. Has your office ever cancelled a contract for a violation of the equal opportunity clause, a standard equal opportunity clause required in all Federal contracts?

MR. BRANDT. Not since I've been in this—

MR. ALEXANDER. How long have you been in your job?

MR. BRANDT. Since—in this position, since 1968.

MR. ALEXANDER. Mr. Dudley, have you ever, nationwide, cancelled a contract for violations of the standard equal opportunity clause?

MR. DUDLEY. No, sir.

MR. ALEXANDER. Or the Indian preference clause?

MR. DUDLEY. No, sir.

ACTING CHAIRMAN HORN. And how long have you served in that capacity?

MR. DUDLEY. Since 1950—1968.

ACTING CHAIRMAN HORN. So both of you, the answer is, since 1968, despite standard boilerplate language on equal opportunity, no contracts have been cancelled in your respective sections of the Bureau of Indian Affairs?

MR. DUDLEY. Correct.

MR. ALEXANDER. I have no further questions at this time, Mr. Chairman.

ACTING CHAIRMAN HORN. Commissioner Freeman.

COMMISSIONER FREEMAN. Mr. Dudley, you are responsible—you supervise the contracts for the construction of BIA facilities.

MR. DUDLEY. Yes, ma'am.

COMMISSIONER FREEMAN. Are there any current contracts that you are now supervising relating to facilities in this area or near a reservation?

MR. DUDLEY. We have a contract for a gymnasium at the Phoenix Indian School in Phoenix which has just been awarded about 3 weeks ago. We have another in California for a school near Riverside which was awarded at the same time.

COMMISSIONER FREEMAN. All right. Mr. Chairman, I would like to ask Mr. Dudley if he will make available to this Commission a copy of that contract.

MR. DUDLEY. Yes, ma'am.

ACTING CHAIRMAN HORN. Very well. Now, this was for specifically which one?

COMMISSIONER FREEMAN. He has the Phoenix Indian School and the school in California—

MR. DUDLEY. Yes.

COMMISSIONER FREEMAN. —which is on an Indian reservation.

MR. DUDLEY. Sherman Indian High School.

COMMISSIONER FREEMAN. Sherman Indian High School.

ACTING CHAIRMAN HORN. All Right. The Phoenix Indian School, the Sherman Indian High School contracts will be entered as Exhibit 20.

[The documents referred to were marked as Exhibit No. 20 for identification and received in evidence.]

COMMISSIONER FREEMAN. Mr. Brandt, you seem to be unaware of whether your contracts have an EEO or nondiscrimination clause or not. So I would like to ask you if you would indicate to this Commission whether you have current contracts with any companies in Gallup, New Mexico, or Arizona or Utah for the procurement and distribution of food supplies.

MR. BRANDT. We have at least one contract for fresh produce in effect and that is probably in Gallup. I would have to check the file to see which it is right now.

COMMISSIONER FREEMAN. Right. Mr. Chairman, I would like to ask that we ask for a copy of the contract that Mr. Brandt believes is with a Gallup company, that a copy of that contract be made available to this Commission.

ACTING CHAIRMAN HORN. All right. That will be entered as Exhibit 21.

[The document referred to was marked as Exhibit 21 for identification and received in evidence.]

COMMISSIONER FREEMAN. Thank you.

ACTING CHAIRMAN HORN. Commissioner Ruiz.

COMMISSIONER RUIZ. Mr. Brandt, does any office employee in your office speak and write the Navajo language?

MR. BRANDT. Yes.

COMMISSIONER RUIZ. And how—and what is his designation as an employee?

MR. BRANDT. Well, I would have to think offhand how many we are talking about here.

COMMISSIONER RUIZ. I am talking about the person next under you.

MR. BRANDT. Next under me? No, sir.

COMMISSIONER RUIZ. And how about next under the next under you?

MR. BRANDT. The chief of my procurement section is an Indian but not a Navajo. He's a Sioux Indian.

COMMISSIONER RUIZ. Yes. All right. Now, let's get back to the question. There's none next under you, correct?

MR. BRANDT. That's right.

COMMISSIONER RUIZ. Now, how about—

MR. BRANDT. That is my assistant.

COMMISSIONER RUIZ. Pardon?

MR. BRANDT. That's one person. That is my assistant. He does not speak or read Navajo.

COMMISSIONER RUIZ. All right. Now, who comes under your assistants in this echelon, this scale of employment?

MR. BRANDT. Then I have four section chiefs, under, at the next level.

COMMISSIONER RUIZ. Four?

MR. BRANDT. Four section chiefs at the next level.

COMMISSIONER RUIZ. Four secretaries?

MR. BRANDT. Section chiefs.

COMMISSIONER RUIZ. Section chiefs. Now, do those section chiefs speak Navajo?

MR. BRANDT. No, sir.

COMMISSIONER RUIZ. All right. Now, who is immediately under those section chiefs?

MR. BRANDT. Well, then they have their individual staffs in their various areas of responsibility. For example, I have a construction contract section. I have a property management section. I have a procurement section, and I have a warehouse section.

COMMISSIONER RUIZ. Now, with respect to those sections, the head of each section, does the head of any of your sections speak or write the Navajo language?

MR. BRANDT. Not to my knowledge.

COMMISSIONER RUIZ. Going down further on the scale, who is under those section heads?

MR. BRANDT. Well, they have various sized staffs. For example, in construction contracts, there are five people under the head of the section. There are five people working in the section.

COMMISSIONER RUIZ. Any of those sections, with relation to the five people that you have mentioned, do you know of any one that speaks or writes the Navajo language?

MR. BRANDT. There's at least one young lady in the construction contract section who both speaks and writes Navajo.

COMMISSIONER RUIZ. There is one. How many employees do you have in this echelon or this scale between that one and yours? How many employees in between?

MR. BRANDT. In between, there's one. Her—this young lady's supervisor reports directly to me.

COMMISSIONER RUIZ. No, I mean—I didn't make myself clear. You have five section heads.

MR. BRANDT. I have three section heads.

COMMISSIONER RUIZ. Three section heads. And on staff of those section heads there is one that speaks and writes the Navajo language?

MR. BRANDT. No, sir. None of the section heads, to my knowledge, either speaks or writes the Navajo language. I thought you were getting down into the organization.

COMMISSIONER RUIZ. Yes. I am going down to the organization as far as I can go before I hit the first Navajo.

MR. BRANDT. Okay.

COMMISSIONER RUIZ. Can you give me an opinion as to how far you have to go down before you hit the first Navajo?

ACTING CHAIRMAN HORN. I think the word is "finding" rather than "hitting."

[Laughter.]

COMMISSIONER RUIZ. "Locating."

MR. BRANDT. It's in the working level of each section. There are at least one or two people. In the warehouse section, for example, most of the people speak Navajo.

COMMISSIONER RUIZ. That's because they have to do physical work?

MR. BRANDT. Yes, sir. That's a—it's a warehouse.

COMMISSIONER RUIZ. Yes. Are you able to answer the question that I asked with relation to how far down you have to go to—

MR. BRANDT. Are you talking about the GS level or the level of responsibility? I am not quite sure what you mean.

COMMISSIONER RUIZ. Well, since you have mentioned GS level, what is your highest GS level where there is a Navajo that speaks or writes the Navajo language?

MR. BRANDT. I would say, maybe, GS-5.

COMMISSIONER RUIZ. GS-5 is the highest one?

MR. BRANDT. Yes. I would have to check the records, but I think that's probably true.

COMMISSIONER RUIZ. How would you answer the question, Mr. Dudley, as to the highest GS level of Navjo employee?

MR. DUDLEY. I don't—

COMMISSIONER RUIZ. Pardon, sir?

MR. DUDLEY. We have very few Navajos and they are—I suppose that—

COMMISSIONER RUIZ. I can hardly hear you, sir.

MR. DUDLEY. I say, we have very few Navajos. Our organization developed from a nationwide structure, and we have very few Navajos and they are quite low-graded.

COMMISSIONER RUIZ. And they are quite what?

MR. DUDLEY. Low-graded.

COMMISSIONER RUIZ. You mean they don't even start with the GS levels?

MR. DUDLEY. Well, yes. But I couldn't tell you from memory what they are. But they would be three or four or five.

COMMISSIONER RUIZ. Nationwide, you have three, four, five Navajos?

MR. DUDLEY. Well—

COMMISSIONER RUIZ. You don't know whether they are the lowest GS level?

MR. DUDLEY. Actually, my office is rather small, about 130 people and all located in Albuquerque, New Mexico.

COMMISSIONER RUIZ. Then you should know if there's only 30.

MR. DUDLEY. No, 130.

COMMISSIONER RUIZ. 130.

MR. DUDLEY. I say, I do not know of a single one that I can vouch for that speaks Navajo.

COMMISSIONER RUIZ. Thank you very much.

ACTING CHAIRMAN HORN. Just to get that clear now, I take it there are no Navajos employed at a professional level of, say, GS-7 and above in either of your operations?

MR. DUDLEY. That's correct, with mine.

ACTING CHAIRMAN HORN. And the GS-5, that Mr. Brandt refers to, is secretarial?

MR. BRANDT. No. She is a contract clerk.

ACTING CHAIRMAN HORN. A contract clerk?

MR. BRANDT. She works not as a clerical—not as a secretary or steno. She works on the contracts, but at a learner's level.

ACTING CHAIRMAN HORN. All right.

Commissioner Rankin.

COMMISSIONER RANKIN. Mr. Dudley, in the way of summary, do contracts let by your office have any provision requiring that preference be given to Indians in employment?

MR. DUDLEY. The only preference is to local employment, local residence. Before 1964, we had a requirement specifically for Indian employment. But, with the passage of that 1964 act, we were asked to remove that specific one.

COMMISSIONER RANKIN. It's a little difficult for me to hear you. Could you put in clauses to that effect?

MR. DUDLEY. We would like to and in 19—

COMMISSIONER RANKIN. Why don't you?

MR. DUDLEY. In 1970 we inaugurated some conferences with some representatives from the Navajo area, from the Navajo Tribe, and from other Arizona tribes to insert such a clause. And we came up with one which we think would be satisfactory. But it has not been approved by our Department of the Interior offices. We would be very happy to put it in.

COMMISSIONER RANKIN. Would you say then that your office neither hinders nor helps insofar as Indian employment is concerned? Would that be a fair statment?

MR. DUDLEY. No, I wouldn't think so, because we do try to encourage contractors to employ Indians, and we are quite specific in our instructions to them that our purpose is to do this and that this is what we want regardless of what our paper contracts—

COMMISSIONER RANKIN. But you also say you have had very little constructive results in this way. Am I right in that, or am I wrong? I am trying to get some conclusions.

MR. DUDLEY. No. I think we have done, you know, better than perhaps most. Our average Indian employment on our contracts, for example, runs between 25 and 30 percent. On the Navajo, it has varied and runs up as high as 50 percent. We have had months, for example, on the Navajo when we had 65 and 66 percent by some specific contractor.

COMMISSIONER RANKIN. Well, have you monitored these contracts to see if those figures are actual, in operation?

MR. DUDLEY. Yes. Yes. These come from our contract inspectors monitoring daily employment.

COMMISSIONER RANKIN. Well, did you hear the two gentlemen who preceded you on the witness stand here this morning?

MR. DUDLEY. Yes.

COMMISSIONER RANKIN. Do you work with that group or do they work with you? I just can't quite get the relationship between that group and your agency.

MR. DUDLEY. Our contract, of course, is with the contractor, but the contractor is responsible for directly working with the group who was here earlier. In other words, our contractors are required to obtain their own laborers and craftsmen.

COMMISSIONER RANKIN. Well, say I am interested in the hiring of more Navajos. Do you think the legislation is sufficient at present and the rules you have by which you have to run your agency are sufficient to accomplish that end? Do we need new rules, new legislation? Or what is wrong with the situation?

MR. DUDLEY. I would like very much to see a clause, such as we have developed, be inserted in our contract requiring the employment of Indians insofar as they are available and capable of performing the work.

COMMISSIONER RANKIN. Thank you, Mr. Chairman.

COMMISSIONER RUIZ. Would you have a training clause in there, too, so that they might become available and employable?

MR. DUDLEY. The clause that we had proposed, if I may, I'll read just one short paragraph. It says, proposes: "The contractor shall also give Indians who are employed preference in promotion and retention as warranted by their skills, capabilities," et cetera.

COMMISSIONER RUIZ. It says nothing about training, does it?

MR. DUDLEY. Other than as it relates to the apprenticeship programs that are part of the national apprenticeship programs.

COMMISSIONER RUIZ. Do you have an apprenticeship program tied in with your particular setup of any kind?

MR. DUDLEY. Yes. All of our contracts refer to the application of the apprenticeship program.

ACTING CHAIRMAN HORN. All right. Let me lay down a record here on Title VII. I want to first enter into the record, as Exhibit 22, the memorandum from the solicitor, Ronald M. Green, Acting Associate Solicitor, United States Department of Labor, to Phillip J. Davis, Director, Office of Federal Contract Compliance, dated August 16, 1973.

[The document referred to was marked as Exhibit No. 22 for identification and received in evidence.]

ACTING CHAIRMAN HORN. I am only going to read part of this memorandum as a prelude to my question. Section 703(i) of Title VII reads as follows:

"Nothing contained in this title shall apply to any business or enterprise on or near an Indian reservation with respect to any publicly announced employment practice of such business or enterprise under which preferential treatment is given to any individual because he is an Indian living on or near a reservation."

Now, the Acting Associate Solicitor says that:

"Section 703(i) of Title VII provides that the prohibitions of Title VII do not apply to the employment of Indians on or near reservations. Therefore, the preference for Indian employment is an absolute one which may work to the total exclusion of all non-Indian employees, trainees, apprentices, or other members of the work force. The absolute preference for Indians may, where Indians and non-Indians are both members of the work force on or near a reservation, also extend to promotions, transfer and layoffs, as well as any other benefits of employment."

Now, my understanding is that this statute, and obviously this interpretation or reconfirmation of the law, exempts Indians from the prohibitions of Title VII. It does not exempt local residents as such.

I am told, and I would like you to respond if I am told correctly or incorrectly, that contractors with whom your agency deals are reading this preference clause literally and hiring local residents who may be Anglo, white, and that there is a feeling that obviously this is in violation of Title VII.

And the question is, to what extent the Bureau's preference clause should really be changed to read "Indians" instead of "local residents?"

So I guess I need to know: One, is the premise of that question correct as to how local contractors in your experience are interpreting it? Two. Is your preference clause clear in terms of Section 703 and in terms of this opinion of Acting Associate Solicitor of Labor Ronald M. Green?

MR. DUDLEY. I can't tell you from firsthand knowledge what the contractors are feeling, but I can only assume that your description is correct. I have not had any instance brought to my attention in this regard.

ACTING CHAIRMAN HORN. Mr. Brandt, do you have any comment?

MR. BRANDT. I think the language could be more specific and should be more specific.

ACTING CHAIRMAN HORN. The language of the Bureau's guidelines?

MR. BRANDT. Right. In the Bureau's contracts and, of course, this portion of the—this portion of the contract is a matter of policy laid down by the Bureau. We follow what comes from Washington in these regards.

Now, as to the cooperation of contractors, I think this varies, of course, with individual contractors. But we have worked, over the years, with the tribe's personnel office prior to the setting up of the organization represented here earlier this morning and, I think, with pretty good relations over the years. And we depend, to a great extent, on—some of the questions have related to what we do about enforcing our hiring requirements.

We have depended, to a great extent, on the tribe to point out to us the problem areas in the contract and in the contractor's operation. And this has been a necessary thing because of the lack of staff and lack of time. We feel that the tribe has a vested interest here, and they certainly will let us know when things are not as they should be, and they do.

ACTING CHAIRMAN HORN. Do you feel local residents, non-Indians, are covered on the same status as Indians under the Bureau's present policies?

MR. BRANDT. Well, if you take the language at face value, of course, it has to be that way. But in our preconstruction conferences and in our discussions with the contractors, we point out that this is intended as a "hire the Indian" clause, and we make this very clear to them that this is the intent of that language.

ACTING CHAIRMAN HORN. Well, the Department of Labor does not seem to find any question between the two. The way it reads Section 703(i), it applies only to Indians. Am I correct, counsel?

Now, why do we have this divergence in Federal policy between the Bureau of Indian Affairs whose mission, presumably, is to help the Indians—

MR. BARRY BERKSON. Yes, sir.

ACTING CHAIRMAN HORN. —and the Department of Labor, which looks like it is really doing the helping of the Indians in terms of this interpretation? And I do not know, as I read the law, of the clear meaning of the word, which is one of the ways in which one interprets law in this country. It seems pretty clear to me. I do not know how many solicitors' opinions one really needs, to say that Indians get a preference.

MR. BRANDT. Well, Mr. Horn, I'm not objecting at all. I am not arguing with you. But you have to remember that we don't make policy at this level.

ACTING CHAIRMAN HORN. Well, okay. Now, where is policy made on an issue like this in the Bureau of Indian Affairs and at what level? Who is really making it? Is it the lawyers in the Bureau of Indian Affairs? Is it an Associate Commissioner? Is the Commissioner? Is it the Solicitor of the Interior? Is it the Secretary of the Interior? Who do you pin it on?

MR. BRANDT. I can only tell you where I get my information.

ACTING CHAIRMAN HORN. Okay.

MR. BRANDT. From the Contracting Services Division of the Bureau in Washington, and they issue a contract assembly, which is the mandatory clauses which will appear in all contracts. This, we follow.

MR. DUDLEY. But I think that they, in turn, get counsel from Interior's Office of the Solicitor on matters such as these.

ACTING CHAIRMAN HORN. Do you know if the Bureau of Indian Affairs has its own solicitor? Or are they all consolidated into a Departmental Solicitor's Office?

MR. DUDLEY. Departmental Solicitor's Office.

ACTING CHAIRMAN HORN. Well, I think, Mr. Alexander, this ought to be one of the first things we follow up on upon returning to Washington, is to write the Secretary of the Interior, introduce him to the Secretary of Labor, and suggest that perhaps they would like to adopt the position of the Solicitor of Labor, an eminent lawyer.

Mr. Alexander.

MR. ALEXANDER. Mr. Brandt, your office, I gather, would also be responsible for administration of the Buy Indian Act, the contracts you let?

MR. BRANDT. Yes, sir.

MR. ALEXANDER. How do you administer that act? How do you—what do you do? What are your procedures?

MR. BRANDT. Well, if a firm represents itself, or an individual represents itself, as an Indian firm, we try to verify this. And having verified it, we contract with them for services or supplies or what have you that we have a need for on a preferential basis.

MR. ALEXANDER. Do you have any affirmative marketing techniques to let people know? Do you go out into the community at all in terms of the Buy Indian Act? Or do you sort of wait for an Indian company to wander into your office in Albuquerque?

MR. BRANDT. You have to understand our staffing problem, Mr. Alexander. We do not have the people to do this. We're on a treadmill just trying—running to try to stay where we are with the day-to-day work, and we don't have a staff that can do this kind of thing.

MR. ALEXANDER. Let me ask you a specific example. Yesterday, when the SBA was testifying as to what projects they could fund or not fund, they pointed out a laundry on the western portion of the reservation that they would have funded had the BIA been willing to guarantee that it would make purchases, use the services of that laundry for the boarding schools. I would assume that something of this nature would come under the Buy Indian Act, would it not?

MR. BRANDT. Yes, sir.

MR. ALEXANDER. Are you familiar with that situation?

MR. BRANDT. No, I am not, but we have four Indian firms doing laundry for us now on a—and this is on a competitive basis among—limited to the Indian firms.

MR. ALEXANDER. Could you investigate? We will give you the transcript from yesterday, and could you investigate for us the situation on that laundry and provide that for the record—

MR. BRANDT. Yes, sir.

MR. ALEXANDER. —as to your agency's position?

MR. BRANDT. Yes, sir.

MR. ALEXANDER. Okay.

ACTING CHAIRMAN HORN. That will be entered as Exhibit 23.

[The document referred to was marked as Exhibit No. 23 for identification and received in evidence.]

MR. ALEXANDER. In addition, I would like to ask you about your coordination for the office of Navajo labor relations. Have you adopted the guidelines of that office?

MR. BRANDT. No, sir. We have talked to them, and we are continuing to talk to them. But it is my understanding that the Department of Labor's solicitor's opinion has come down to the effect that ONLR guidelines are not completely compatible with the Federal labor laws. And they have made recommendations for some changes in these.

MR. ALEXANDER. They have made some recommendations for changes. Those have been made, and the issue in controversy there was with Federal employment policy, not private employment. This was an issue of a preference in Federal employment, not in Federal contracts, Mr. Brandt.

MR. BRANDT. I'm not familiar with the details of it. I know there was some controversy with the Labor Department.

We are talking to these people, and we have talked to them. But this is a fairly new organization, as you know, and as I said earlier—

MR. [illegible]XANDER. Yes, a year and a half old.

MR. BRANDT.—we have dealt with the Navajos' department of personnel over the years and—well, I assume we will now deal with this new organization.

MR. ALEXANDER. Assuming that there is no legal problem to your incorporating those guidelines, do you have the authority to adopt those guidelines for your contracts?

MR. BRANDT. No, I don't think so. I think this is the type of thing that we were talking about earlier that comes from our central office.

MR. ALEXANDER. One of the things that you raise, Mr. Brandt, is whether or not you wait for the Solicitor of the Interior to write a clause on Indian preference, or you ask the Solicitor of the Interior, based on your information that the clause as it exists is incomplete, to alter that.

I write contracts for the Commission many times and the substantive people say, "We would like to achieve this result." And they make specific requests. You are a substantive person. Have you made these requests of the Solicitor's Office? Have you asked them to change the clause?

MR. BRANDT. Well, I have participated in the meeting that Mr. Dudley mentioned, for example, requesting a change in the Indian preference clause—

MR. ALEXANDER. Could—

MR. BRANDT. Yes, I have.

MR. ALEXANDER. You have. Have you gotten a response from the Solicitor's Office?

MR. BRANDT. Not a direct answer, no.

ACTING CHAIRMAN HORN. What kind of an answer do you get in a meeting like that? I mean, you have requested, based on your experience as a professional in the field, saying, "Look, this thing isn't working the way we all want it to work, and we have a stewardship in the Bureau of Indian Affairs." What kind of response to you get? Do they say it is illegal, unconstitutional, poor public policy, or what?

MR. BRANDT. I think part of the problem is the same problem we have, lack of staff and things drag on. I think Mr. Dudley might give a more specific answer to this particular question because—check me if I'm wrong now, but do you check—

MR. DUDLEY. The last information that we have on it is a memorandum from the Office of Contracting Services that the Bureau of Indian Affairs headquarters in Washington addressed to Mr. Browning Pipestem, office of program development, the Navajo Nation at Window Rock. You may have a copy of this.

MR. ALEXANDER. Could we have a copy?

MR. DUDLEY. Yes. As a matter of fact, I would like to give you this whole little booklet.

But in essence, it notes that they have some problems resolving the interpretation of the Buy Indian Act to Indian employment preference. And it, in effect, has said that as soon as we get to it, we are going to answer your request for inclusion of—

ACTING CHAIRMAN HORN. What is the date of that? Mr. Pipestem has not been around too long.

MR. DUDLEY. It is dated September 22, 1972.

ACTING CHAIRMAN HORN. All right. That and related documents will be entered as Exhibit 24. Thank you.

[The documents referred to were marked as Exhibit No. 24 for identification and received in evidence.]

MR. ALEXANDER. I think the attorney that accompanied you should identify himself for the record, please.

MR. BERKSON. My name is Barry Berkson. I am from the Solicitor's Office, Albuquerque, the United States Department of Interior, and here as counsel.

ACTING CHAIRMAN HORN. Have you completed your examination, Mr. Alexander?

MR. ALEXANDER. Yes.

ACTING CHAIRMAN HORN. Mr. Buggs.

MR. BUGGS. Gentlemen—

MR. DUDLEY. Excuse me, this also contains the proposed Indian preference clause that we would—we think would satisfy us, and perhaps it would help greatly in increasing employment.

ACTING CHAIRMAN HORN. Yes. Could we see that right now while Mr. Buggs is asking his questions?

COMMISSIONER FREEMAN. I have one question. Mr. Brandt, you referred often to the fact that you have a small staff. How many employees do you have in your office?

MR. BRANDT. Well, now you are talking about the contracts office, right? Because I cover other areas.

COMMISSIONER FREEMAN. Now, you are chief, BIA Navajo area property and supply branch, Gallup, New Mexico?

MR. BRANDT. Yes.

COMMISSIONER FREEMAN. How many employees do you have?

MR. BRANDT. May I break this down by sections. I have five people in my construction contract section. I have 11 in what we—

COMMISSIONER FREEMAN. Do you know the total number of employees that you supervise?

MR. BRANDT. Yes, ma'am.

COMMISSIONER FREEMAN. What is the total?

MR. BRANDT. I have 92*.

COMMISSIONER FREEMAN. Ninety-two employees?

MR. BRANDT. Most of these are warehousemen, however.

COMMISSIONER FREEMAN. You indicated that you do not have information about who actually enforces the provisions of the contract.

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* "May I hasten to add that of the 92 persons indicated, only 17 are in any way involved with the contracting process and of these 6 are clerks and typists—not Contract Specialists. The balance of the 92 is made up of persons charged with property management, warehousing, supply accounting, office services, etc." Letter to U.S. Commission on Civil Rights from Thomas Brandt, Feb. 7, 1974.

MR. BRANDT. No. I said—

COMMISSIONER FREEMAN. You said that you do not do it yourself.

MR. BRANDT. No. I said we do not have the staff, the time to get out in the field and do this ourselves, that's right.

COMMISSIONER FREEMAN. Well, who administers the other provisions of contracts?

MR. BRANDT. Construction contracts? The engineering staff. If it's a road, if it's a highway construction, then our roads branch has the staff in the field who administer the engineering aspects and make the reports and that sort of thing. If it's other type of construction, then our plant management division or branch would do this.

COMMISSIONER FREEMAN. Have you ever informed your supervisors that you do not have staff and, therefore, you are not doing any enforcement of the EEO provisions of the contract?

MR. BRANDT. Yes, ma'am, I have, and I have done it in writing.

COMMISSIONER FREEMAN. And so, as I said, you and Mr. Dudley have already indicated to us that neither office enforces the nondiscrimination provisions of any of the contracts that you supervise?

MR. DUDLEY. To the extent that they are called to our attention, we do, yes.

ACTING CHAIRMAN HORN. Let me get it straight. Do you feel, in your judgment, that the Bureau of Indian Affairs has enough personnel to enforce the construction aspects in terms of field supervision?

MR. BRANDT. The construction?

ACTING CHAIRMAN HORN. Yes. The nondiscriminatory aspects. In other words, we have various types of inspections, I take it, that take place under contract.

MR. BRANDT. I assume they do, but I am not an expert on that.

ACTING CHAIRMAN HORN. Well, what I have heard in this exchange is that the Bureau of Indian Affairs apparently provides the staff to supervise those aspects of the contract that do not deal with people.

COMMISSIONER FREEMAN. That's right.

ACTING CHAIRMAN HORN. But when you come to dealing with people, somehow we just can't find people to enforce the law. And I must say that is a little disheartening to me.

MR. DUDLEY. I don't think that's really quite so but—

ACTING CHAIRMAN HORN. You just said you didn't give them the staff, or they don't get the staff.

MR. BRANDT. As soon as a people problem occurs on the project we do have staff immediately go to the field to investigate.

ACTING CHAIRMAN HORN. Well, would the Bureau of Indian

Affairs wait until the road falls in before they went to investigate a contractor as to whether he was performing, putting in adequate materials? Would they wait until some building falls down? Or would they go out and supervise the contract as it goes along?

I think what the Commission is saying is that the Bureau of Indian Affairs has an affirmative responsibility, under Federal law and Presidential Executive orders, to assure itself that the people aspect of contracting complies with Federal policy. And I suspect they sure would do something on the physical aspects of Federal contracting or the fraud aspects of Federal contracting.

MR. BRANDT. Well, Mr. Horn, in defense of the Bureau, I would like to say, for one thing, when I assumed this job, we were spending about $18 million a year. We are now—in the past fiscal year just finished, just ended, we spent something over $60 million. This thing has grown at a tremendous rate, and I think it's axiomatic that the administration gets staffed up last in any growth in organization.

ACTING CHAIRMAN HORN. Mrs. Freeman, you have a comment?

COMMISSIONER FREEMAN. I would like to refer to your recommendation with respect to Indian employment preference, and "Indian employment preference," this is what you are proposing?

"Indian employment preference is authorized pursuant to Section 23 of the Act of June 25, 1910, which provides that, so far as practicable, Indian labor shall be employed; in sections of Title VII of the Civil Rights Act of 1964 which provides that preference in employment may be given to Indians living on or near an Indian reservation, thus improving their skills, thereby providing an opportunity for future employment."

It would be my opinion, sir, that this is considerably less than what the situation requires, and I would certainly urge you to review this because this is actually—on the basis of your nonenforcement of the requirements of the contracts that you have to enforce now, I do not see any improvement.

MR. DUDLEY. I hope that you would review the clause in its entirety, rather than just—

MR. ALEXANDER. The language that Mrs. Freeman is referring to is "so far as practicable."

COMMISSIONER FREEMAN. "So far as practicable" is a very vague term that actually requires nothing.

MR. DUDLEY. I believe that later parts of it do identify it more clearly.

ACTING CHAIRMAN HORN. Well, I think Mrs. Freeman probably would also suggest that the "may" should be a "shall."

COMMISSIONER FREEMAN. That's right.

MR. DUDLEY. Actually, I think the quote is from the so-called "Buy Indian Act" which says it in that manner.

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ACTING CHAIRMAN HORN. In that manner?

MR. DUDLEY. Yes.

COMMISSIONER FREEMAN. But what we have seen is the constant—the results are that there has been very little "Buy Indian" on the part of the Bureau of Indian Affairs.

MR. BRANDT. That isn't true in this area, Mrs. Freeman. About 48 percent of our procurement last year was with Indian firms, Indian individuals, or Indian tribes.

MR. ALEXANDER. Is that nationwide or in the Gallup area?

MR. BRANDT. No, I can't speak for nationwide. I'm talking about this area.

MR. ALEXANDER. What do you define that as? Is that 100 percent Indian-owned, partial Indian-owned, 1 percent Indian-owned?

MR. BRANDT. The Bureau says an Indian firm for preference under the Buy Indian Act must be 100 percent Indian-owned and controlled.

ACTING CHAIRMAN HORN. Mr. Buggs.

MR. BUGGS. You have covered most of the questions I had in mind. I had only one other. Thank you, Mrs. Freeman.

Do you get guidelines from BIA in Washington with respect to the monitoring of your responsibilities in terms of the Indian preference clause?

MR. BRANDT. Not specifically. There is no pattern of guidelines on that particular subject. We get guidelines on contract administration and contract procedure.

MR. BUGGS. With respect to Indians?

MR. BRANDT. That's included.

MR. BUGGS. Also?

MR. BRANDT. Yes, sir. That's included.

MR. BUGGS. The Chairman indicated, or rather raised a question with you with respect to whether or not you had ever sent a letter cancelling a contract. And you indicated, "no."

My question is, have you ever sent—do you know what the other previous three steps are prior to the sending of such a letter for noncompliance?

MR. BRANDT. Well, there would be a warning, of course. I can't cite the statute or the regulation on that.

MR. BUGGS. The probability is that, then, not only have you not sent a letter cancelling the contract, but you have not sent a letter warning that a contract might be cancelled or a letter indicating a finding of noncompliance?

MR. BRANDT. No, sir. But we have held numerous meetings with contractors on this subject in an attempt to increase the rate of Indian employment on construction contracts.

MR. BUGGS. You know, I do not know how you do that if you do not count them. Mr. Dudley simply says they take a visual view. I wonder whether you take that at the time when the Indians are or are not having ceremonial services. So do you know when they are there and when they are not there?

MR. BRANDT. Well, sir, as I said earlier, we depend on the tribe to alert us to—if they feel that Indians are being discriminated against, or if not enough Indians are being hired on a given job, they let us know.

MR. BUGGS. But is it their responsibility or yours to know?

MR. BRANDT. It's ultimately our responsibility. But you have to have the people. You can't do it without them.

MR. DUDLEY. Our counts are made daily during the course of the contract.

ACTING CHAIRMAN HORN. I'm sorry, I couldn't hear. Would you mind repeating that?

MR. DUDLEY. You see, our counts are made daily during the course of the contract.

MR. BUGGS. And do they give you a written statement as to what they counted?

MR. DUDLEY. They include it in their diary which they keep on a daily basis.

MR. BUGGS. But does that ever get to you?

MR. DUDLEY. It comes into our office and our contract compliance officer, who reviews it.

MR. BUGGS. And what does he tell you? Does he tell you that things are good, bad, or indifferent?

MR. DUDLEY. Actually, he hasn't. But I think that we, perhaps, are remiss in the sense that we accept what is—unless someone—you know, if we have a complaint from an Indian group that says they are not complying, if we get 30 percent employment we—I guess it's done wrong by accepting it as being fact.

MR. BUGGS. But you really—if you had to put your hand on a Bible and say that you knew for a fact that all of the responsibilities that you have with reference to the compliance of contracts involving the hiring of Indians, could you really say that you know for a fact that all of the firms that you are supposed to monitor are, in fact, in compliance?

MR. DUDLEY. I can only say that we have not received any complaints.

MR. BUGGS. No, but could you say they were in compliance with the law?

MR. DUDLEY. To the best of my knowledge and ability, I would have to say that. But I will repeat, we are, of course, limited by—depending on those who have been harmed, to tell us if they have been.

MR. BUGGS. But could you say they were in compliance?

MR. DUDLEY. Well, with respect to the terms of the contract, I'm going to say that to the best of my ability I could.

MR. BUGGS. Thank you.

Acting Chairman Horn. Let me go back to a point that Mr. Buggs raised on guidelines. I take it, in contract administration, generally, there are probably handbooks and guidebooks put out as to how you look at the money aspects of a contract, and if you had auditors go out and look at a contract, what they should be looking for. Am I wrong on that or right?

Mr. Brandt. Right.

Acting Chairman Horn. There are some sort of guidelines that come out on a national basis. Are these Bureau of Indian Affairs or Department of the Interior guidelines on contract administration, generally?

Mr. Dudley. We have some of both.

Acting Chairman Horn. Okay. Now, do I understand correctly that there really never have been any guidelines for monitoring and enforcement, and examples of things one looks for when you are dealing with ethnic counts, et cetera, furnished by either the Department of the Interior or the Bureau of Indian Affairs so that a local official of BIA will know what he is hunting for when he goes out to see if the equal employment opportunity provisions are being enforced? How do you train and educate your manpower to do it?

I mean, I am not saying that you should, but I am saying the Bureau of Indian Affairs ought to, one—since this is a national problem, they have national jurisdiction—have some sort of guidelines just as an auditor would have when he goes out to investigate fraud and where the money went, into which account. How do they know what to do?

Mr. Dudley. Actually, we do provide some supervision of our field people, and they do have contact with him and they do review with him the material that they use as guidelines.

Of course, one of our problems is that we are enforcing a clause which says that the contractor shall employ by local preference—local preference. And the difficulty with the reservation contracts is—you know, we can identify people as being local, but we really have no authority under our present contract to say that they must be Indian. We can only urge this. You know, we can threaten, but we have no big stick.

Acting Chairman Horn. Well, I gather from previous testimony, in a way, we've got a toothless pussycat here because, while the law we think in this exchange says one thing, there is a feeling of the Bureau that they really have no sanctions that have teeth in them. And yet, I think we all know that under Federal law, you could cancel the contract. Presumably it is a clause in the contract. And the question is, before you cancel it, how do you get the evidence one way or the other to know that the law is being carried out?

Now, what my concern is, along the lines of Mr. Buggs' question, is that there are really no decent handbooks or conferences—and I would be glad to be corrected if I am wrong, but this is what I am hearing—to educate employees as to what do you go and look for when you go out to a job site, a construction site, when you look at a supplier or whatever, as to what actions or behavior or patterns or practices provide conformity with Federal law.

MR. BRANDT. I would say there are no hard guidelines. This is a matter of judgment on the part of the people looking. That's all.

ACTING CHAIRMAN HORN. Well, how is that judgment educated? Has there ever been a national conference in BIA where all the equal employment officers from all the regions have come together and talked about and shared experiences as to what they have discovered in contract violations?

MR. BRANDT. Not to my knowledge.

ACTING CHAIRMAN HORN. Well, I must say that is a sad commentary on the leadership of the Bureau of Indian Affairs. And I think in our enforcement, I shall—well, Mrs. Freeman mentioned that one of my interests since 1969 has been trying to get on the record what is the law, what are the staff needs to carry out the law, and to what degree is the law being carried out. And I will look with great interest at our report on the Bureau of Indian Affairs in this respect on the next go-round.

COMMISSIONER RUIZ. Well, sir—

ACTING CHAIRMAN HORN. Yes, Mr. Ruiz.

COMMISSIONER RUIZ. With relation to the BIA employees who work for the Indian contract schools, what do the regulations, if you have any, or guidelines in the Bureau of Indian Affairs manual, for example, show as to the control which local Indian communities have over Bureau of Indian Affairs' employees? Can the school board, for example, control or direct BIA employees who work for the contract schools?

MR. BRANDT. You say, can they?

COMMISSIONER RUIZ. Yes.

MR. BRANDT. We have one situation where this is the case, sir, and there have been considerable controversy about it but that's still—that's the way it is.

The majority of the employees of the school work for the contractor, which is the local school board. A minority of—I don't know how many people; let's say 8 or 10—are on the BIA payroll and are assigned to that school to perform their functions there under the local board.

COMMISSIONER RUIZ. What is the controversy about?

MR. BRANDT. There's a feeling that we have a civil service employee who is nominally a part of this area office function, but he is working for someone who is not a Federal employee. And our personnel people have some reservations about this. Nevertheless, we are doing it.

COMMISSIONER RUIZ. Well, as I understand contract schools, they used to be BIA schools. And in theory, they were transferred in order to accomplish Indian control of educational institutions previously controlled by the BIA. Is that correct?

MR. BRANDT. That's right.

COMMISSIONER RUIZ. And isn't it a fact that this controversy refers to that very subject?

MR. BRANDT. There's no question about the advisability of the education system being turned over to the Navajo people to run for themselves, if that's what your question refers to.

COMMISSIONER RUIZ. Well, are the BIA employees, who work for the Indian contract schools, directed by and controlled by the Indian Affairs—Bureau of Indian Affairs or the community?

MR. BRANDT. Those BIA employees located at a contract school take their daily directions from the contractor. They do the—they are paid by the Bureau. There's a Bureau timekeeper. And the clerical functions are handled by the Bureau for their specific cases.

But they work for the contractor. They take their directions from the contractor as if they were a contractor employee.

COMMISSIONER RUIZ. Now, this controversy that is existing, that you have in mind, is it because of the fact that the school—local Indian Bureau—is having some difficulty about controlling the BIA employee?

MR. BRANDT. No, sir. I don't think there's been any problem of that sort at all. This is a philosophical question that our personnel people have over civil service employees working for non-civil service supervisors.

COMMISSIONER RUIZ. And you feel that that will be straightened out to everyone's satisfaction?

MR. BRANDT. I think so. We had some controversy. The school is now operating under this concept. It did last year.

The plan is to phase this program out—this is a mutually agreed plan—to phase this out so that it will become all contractor employees over a period of time. There are no deadlines on the phaseout, and we are not putting any pressure on to bring about a deadline. But it is mutually agreed that the contractor will have all of his own employees there eventually. And this is what they want, of course.

COMMISSIONER RUIZ. Thank you.

ACTING CHAIRMAN HORN. Commissioner Rankin.

COMMISSIONER RANKIN. You gentlemen heard the Vice Chairman here say that he plans to take this, the testimony, and what we have learned here today, up with the Bureau in Washington, D.C. Are you planning, on your part, to take up with the Bureau at Washington the thrust of this hearing here and make any suggestions to them for improving this situation?

MR. BRANDT. Well, the most—

COMMISSIONER RANKIN. Or do you have to report what you have done here to the Bureau in Washington?

MR. BRANDT. I will report. I don't know that I have to report.

COMMISSIONER RANKIN. Well, that's all right. You will. And so you, on your part, will report the thrust as well as what the Commission here might do with respect to the Bureau in Washington, D.C.?

MR. BRANDT. Yes, sir. And I think this is in line with what I said earlier, that we need more staff. We have been working on getting more staff, and I think we can do a more adequate job if we have more staff.

COMMISSIONER RANKIN. And with both of us working this way, we might accomplish something, is that correct?

MR. BRANDT. I hope so.

COMMISSIONER RANKIN. I hope so.

ACTING CHAIRMAN HORN. I will ask the Staff Director to immediately prepare a letter to the Commissioner of Indian Affairs, with a copy to the Secretary of Interior, on following up on the exchange this morning in terms of the preparation of guidebooks, guidelines, for the enforcement of contract compliance throughout the country.

The Commission will take a ten-minute recess.

ACTING CHAIRMAN HORN. Mr. Pfister and Mr. Lacey, if you will stand and raise your right hand.

[Mr. C. W. Lacey and Mr. Jack Pfister were sworn and testified as follows.]

TESTIMONY OF MR. C. W. LACEY, CONSTRUCTION MANAGER, BECHTEL POWER CORP., LOS ANGELES, AND MR. JACK PFISTER, ASSOCIATE GENERAL MANAGER, POWER, SALT RIVER PROJECT, PHOENIX, ARIZONA

ACTING CHAIRMAN HORN. Please be seated. Would you identify counsel who are with you, if counsel is present, and then Mr. Alexander will proceed with the questioning.

MR. BUTLER. Mr. Stephen Butler, counsel for Bechtel Power Corporation.

MR. MICHAEL. Mr. Leroy Michael, director of legal services, counsel for Salt River Project.

ACTING CHAIRMAN HORN. Fine. Mr. Alexander.

MR. ALEXANDER. Mr. Lacey and Pfister, would you both identify yourselves for the record; name and address and position with your respective companies.

MR. LACEY. C. W. Lacey, construction manager for Bechtel Power Corporation. I make my office in Los Angeles. I am responsible for the construction aspects of the Navajo generating station.

MR. PFISTER. Jack Pfister, Salt River project, Phoenix. My title is associate general manager, power. And my responsibility has to do with all power matters at Salt River project.

MR. ALEXANDER. We have a prepared statement from Mr. Charles W. Lacey that I gather from counsel was prepared in response to some discussions we have had which cover some of the issues to be discussed. I would like that submitted as an exhibit.

COMMISSIONER RANKIN. I am taking the Chairman's place while he is temporarily absent. I will order that that be submitted. What will be the number? Do you have his list?

MR. ALEXANDER. I believe it is twenty—

COMMISSIONER RANKIN. Twenty-five. It will be Exhibit 25.

[The document referred to was marked as Exhibit No. 25 for identification and received in evidence.]

MR. ALEXANDER. Thank you.

Mr. Pfister, could you briefly describe for us what the Salt River project is and what you company's role in it is?

MR. PFISTER. The Salt River project is an agricultural improvement district organized under the laws of the State of Arizona. It is a quasi-municipal corporation. It operates a Federal reclamation project pursuant to contracts with the Department of the Interior.

MR. ALEXANDER. In relation to the Navajo project, could you describe your company's role and describe that project as a power project?

MR. PFISTER. The Navajo project consists of several elements: Three 750 megawatt coal fire generating units located near Page, Arizona; a railroad located, running from the Black Mesa area to the generating station.

MR. ALEXANDER. Black Mesa is a strip-mining coal operation by the Peabody Coal Company interests?

MR. PFISTER. Black Mesa is an area on the reservation, and Peabody Coal Company operates a strip mine on Black Mesa.

MR. ALEXANDER. Fine.

MR. PFISTER. The Navajo project also consists of two 500 kv extra high voltage transmission lines running from Page to the Phoenix area, and one 500 kv line running from Page to southern Nevada.

MR. ALEXANDER. What is the cost of this project? What is the size of this project that we are talking about, in dollars, so that we can have some sort of a—

MR. PFISTER. It's approximately a $900 million project in total.

MR. ALEXANDER. The Navajo project?

MR. PFISTER. The Navajo project, including all the elements which I have described.

MR. ALEXANDER. Over what period of time will it be built?

MR. PFISTER. Construction commenced in 1970, and the last unit will be completed in May of 1976. So it is approximately a 7-year project.

MR. ALEXANDER. Now, your organization, the Salt River project, has been involved in the construction of other sites, other than the Navajo project. You were involved to some extent in the Four Corners project, were you not?

MR. PFISTER. The Salt River project is a participant in two of the units located at the Four Corners complex.

MR. ALEXANDER. But at this juncture, you are the project manager for the Navajo? You are the primary agency here?

MR. PFISTER. Yes. There are six participants in the Navajo project, and those participants have designated Salt River project as the lead participant, or what we call the project manager, to supervise the construction of the generating station and the railroad.

MR. ALEXANDER. You are, of course, familiar with the Navajo preference clause, are you not?

MR. PFISTER. I am. You are making reference to the clause that is contained in the lease agreement between the Navajo Tribe and the participants in the Navajo project?

MR. ALEXANDER. Yes. There was a similar, although somewhat different, clause in the Four Corners project lease, was there not?

MR. PFISTER. That is correct.

MR. ALEXANDER. What was your understanding at the time that you signed the lease, that your company signed the lease, as to what Navajo preference meant?

MR. PFISTER. It's my understanding that preferential employment would be given to Navajos, and by the term "employment," it was meant initial employment. It was also my understanding that all unskilled labor would be employed from local Navajos, if available, and that with reference to qualified or semiskilled and skilled labor, that we would recruit—they would be recruited first among Navajos. And if qualified Navajos were not available, then they would be recruited among non-Navajos.

MR. ALEXANDER. As lessee, you have had the primary responsibility for enforcement of that clause, right?

MR. PFISTER. That is correct.

MR. ALEXANDER. You have subcontractors who do the actual construction?

MR. PFISTER. Yes. We have entered into contracts with Bechtel Power Corporation to construct the generating station and Morrison-Knudsen to construct the railroad. And we have, in turn, or those contracts include, on a verbatim basis, the Navajo preference provisions contained in the lease.

MR. ALEXANDER. How do you enforce your lease obligations on your contractors?

MR. PFISTER. We obtain weekly reports from our contractors and their subcontractors concerning the—

MR. ALEXANDER. Have you done that since the beginning of the project, or is that part of the renegotiation of the preference clause? I'm talking about right now, initially. When this project started, when you entered into contracts with Morrison-Knudsen, Bechtel Power Corporation, what did you require of them in those contracts?

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Mr. Pfister. We requested that they, in the prejob conferences with the unions, review the Navajo preference provisions and obtain the union consent to the administration or union acknowledgement of the existence of the Navajo preference provisions of the lease. We also required that on all requests by Bechtel or Morrison-Knudsen, through the hiring hall, that they request that Navajos who are on the out-of-work list be dispatched to the job prior to dispatching non-Navajos.

Mr. Alexander. Now, there is substantial controversy as to what the preference clause has meant over the term of the lease so far. What is your understanding as of today, as to what that lease requires you to do as the major participant?

Mr. Pfister. Mr. Alexander, let me correct a statement.

There has been a controversy over what the language requires. We—and by "we" I would make reference to the lessees—have never yielded in our position as to what it requires. We have, as a result of a, what constituted a directive from the Department of the Interior, through the Secretary of the Interior, entered into negotiations with representatives of the tribe to enlarge and expand upon the preferential obligations under the lease.

We have had extensive negotiations. And on August 1, 1972, we concluded negotiations and submitted to the Navajo Tribe what we described as a program for preferential employment of Navajos, which contains elements that go far beyond the obligations, or our view of our obligations, under the basic lease agreement.

That program was approved by the board of directors of ONLR. It was never approved by Chairman MacDonald. Notwithstanding the fact that it had not been approved, we—

Mr. Alexander. Why was it not approved by the chairman, to your knowledge?

Mr. Pfister. The only information I have on that, Mr. Alexander, is the result of a press conference that Chairman MacDonald had at Grand Canyon, I believe in October or November of 1972, in which he is reported to have said that he would not approve the agreement because it did not contain specific goals and timetables.

Mr. Alexander. And at the present time, that is the stage of negotiations between yourself and the tribe, the specific goals and timetables per craft?

Mr. Pfister. We are in the process of negotiating specific goals and timetables per craft. But I wouldn't characterize that as all of the status of our negotiations.

During or following our submittal of the August 1, 1972, proposal, notwithstanding the fact that the tribe had not formally agreed to it, we implemented all of its provisions.

In March or April—and I'm sorry I can't recall the exact date—after Mr. Tom Brose was hired as the executive director of ONLR, we were notified by Mr. Brose that he would not—or found certain provisions in the August 1, 1972, proposal unacceptable. We have since then engaged in negotiations, further negotiations, which go even beyond the August 1, 1972, proposal, particularly in the areas of training.

MR. ALEXANDER. Why would you not be willing to accept, at this point in time, the guidelines that are now in effect for all contracts and leases that would be entered into now?

MR. PFISTER. Mr. Alexander, to my knowledge, we have never been asked to accept the guidelines that are now in effect. And I am not sure that I know what set of guidelines are in effect.

During the course of our negotiations, certain matters that we are led to believe are contained in the guidelines have come up for discussion, and we have negotiated on many areas, including training, upward mobility, procedures for reporting, which I believe are contained in the guidelines.

MR. ALEXANDER. This is correct.

MR. PFISTER. There are some provisions that we were asked to accept that we found unacceptable.

MR. ALEXANDER. Such as?

MR. PFISTER. Such as that we man the plan with a ratio of one apprentice, one Navajo apprentice to every journeyman.

MR. ALEXANDER. Why was that unacceptable?

MR. PFISTER. It was unacceptable because the way the work is performed, there's just not adequate work for that many people, and we could not provide effective training for that many Navajos. And we have taken the position throughout our negotiations that we will not make work for anyone, including Navajos. We will only employ people when we have gainful employment for them.

COMMISSIONER RANKIN. Did you suggest an acceptable ratio?

MR. PFISTER. The— Well, perhaps I could have Mr. Lacey speak to that, Commissioner Rankin, because that has to do with the contracts between Bechtel and the unions.

MR. ALEXANDER. Mr. Lacey, would you like to comment?

MR. LACEY. Yes. There are apprenticeship ratios in most of the craft union agreements, keeping in mind that all crafts are not apprenticeable. They do not have apprentices. And these are ratios that have been accepted over the years as being reasonable ratios and, also, in most instances I believe accepted by the U.S. Department of Labor, which is active in all the apprenticeship programs.

MR. ALEXANDER. Mr. Lacey, the August 1 agreement, mentioned by Mr. Pfister, which, although it has not been accepted by both parties, is your proposal, basically. It calls for a 45 percent minimum hiring goal. Could you balance that off with the unwillingness to accept the 50 percent ratio in the apprenticeship situations?

MR. PFISTER. Mr. Alexander, let me correct you. That 45 percent hiring goal refers to employment during operations, not during construction. And that specifically applies to the Salt River project, and it states that by the time the third unit is in commercial operation, which will be May of 1976, our goal is to have 45 percent Navajos.

MR. ALEXANDER. In considering that Mr. Brose suggested that 60 to 70 percent be an appropriate goal for employment on the reservation in construction, I cannot quite follow why 45 percent would not be an appropriate goal in construction.

MR. PFISTER. Because, Mr. Alexander, you do not understand the difference between construction and operating a plant. It requires somewhere between 6 to 10 years of training in order to operate a coal fire generating unit of this size, which we call a supercritical unit. And that is whether you are Anglo or Navajo.

We have, in the very early stages of—well, 1970, we began recruiting on the reservation in bringing Navajos to Phoenix to begin training in our plants in preparation for assignments as operators at the Navajo generating station. We currently have two Navajos who appear to be qualified to act as operators and will act as operators when the first unit goes on line in May of 1974. We have two more that are auxiliary operators.

We have, also, among the employees at the generating station, a number of apprenticeable crafts that require anywhere from 3 to 4 years of apprenticeship. We, in 1970 and in the years since, have canvassed the reservation. We have brought Navajos down to Phoenix and put them into our apprenticeship program and, hopefully, we will take some journeymen Navajos up to the Navajo plant by the time the first unit goes into commercial operation.

So because of the training required, it is our judgment that, as of May, 1976, 45 percent of Navajos represents a very optimistic goal, and one which necessitates a great deal of training and money on our part.

MR. ALEXANDER. Would you say the same was true for construction workers and laborers?

MR. PFISTER. I would prefer that Mr. Lacey respond to that.

MR. ALEXANDER. Mr. Lacey.

MR. LACEY. Would you repeat the question?

MR. ALEXANDER. Well, Mr. Pfister seems to be making the point that it is more difficult to fill the operating positions once the plant is established because of the long term training and specialization that is involved in those types of journeyman jobs.

There, however, is a range of different types of jobs in the construction industry. Do you see the same problems in establishing numerical goals? I would assume, on the basis of Mr. Pfister's statement, that it would be easier in the construction trades to have more substantial goals than exist.

Mr. Lacey. Your question to me seems twofold. You are speaking of goals and you are talking about the length of time it might take to train a particular craftsman.

Mr. Alexander. Correct.

Mr. Lacey. Well, would you be more specific as to which you wish me to answer?

Mr. Alexander. Well, let us focus right at the moment in terms of the goals for the construction trades for Bechtel's construction part of this job.

Mr. Lacey. And what is your question in regard to those goals?

Mr. Alexander. Could we not have more substantial goals for construction crafts than we would have in the operating section? You see, from what I understand, there seems to be some question as to the number of Navajos that can be obtained and what are legitimate goals for the construction trades. Is that not true?

Mr. Lacey. I believe that that was the point of earlier testimony. Maybe I could address myself to that.

Mr. Alexander. That's what I am asking you.

Mr. Lacey. I think the inference was, in earlier testimony, that we had not been willing to or had not established goals and timetables for employment of Navajos. Our affirmative action program for the Navajo project has always included goals and timetables for the employment of Navajos.

Mr. Alexander. It is a question of the numbers, though. I gather that these goals and timetables are not acceptable to the tribe. I am familiar with your goals estimates of being, for example, in one trade, 79 persons, and the tribe says 85 persons. I basically do not understand why the debate over 6 particular journeymen on the reservation with 130,000 people.

Mr. Lacey. Our position on goals and timetables—and it is also the position of the OFCC as we interpret their explanation of it to us—is that goals and timetables must be attainable goals and timetables and not goals and timetables published for whatever other purpose.

The goals and timetables which we have in our affirmative action program and which we have since modified and presented to the ONLR at subsequent meetings, we feel to be attainable goals based on our knowledge of what the available Navajo skilled manpower is.

Mr. Alexander. Which, I take it, differs from the tribe's estimate?

Mr. Pfister. Mr. Alexander, if I may respond to that—

Mr. Alexander. Yes. Sure.

Mr. Pfister. Indeed, it does differ from the tribe's estimate. Throughout our negotiations, we have had a disagreement on the available skilled craftsmen that are unemployed and available for work in the Page area with the tribe.

In order to get a better basis upon which our negotiations could proceed, the October, or August 1, 1972, proposal or program contained a provision that the tribe and the lessees would jointly conduct a skills inventory reservation-wide, and that that skills inventory would be preceded by a great deal of publicity.

In cooperation with representatives of the tribe, the lessees did conduct a skills inventory in September and October of 1972. We visited 25 different places on the reservation. We spent approximately 1 day at each site. We interviewed all Navajos that were seeking employment.

As a result of that interview, we determined what skill level they might be able to furnish. As a result of that survey, I believe there were less than 600 applicants. Of that 600 applicants, less than 100 indicated a skill level commensurate with the journeyman skills required during construction of the Navajo plant.

The tribe—both the tribe and the lessees were disappointed in those results. And in January or February of 1973 when we—pursuant to our August 1 proposal—offered to sit down with the tribe and negotiate goals and timetables, we were requested to perform another skills inventory to determine whether or not the results of the first inventory were representative.

We did conduct a second skills inventory, again in cooperation with the officials of the tribe. That skills inventory was conducted in May of 1973. It was not quite as extensive, but I believe it did cover all areas of the reservation, and perhaps five or six specific sites.

The results of the second inventory, skills inventory, were even more disappointing than the first. Only 70 people came in and applied or expressed an interest in employment. And of that 70, less than 10 had a skill level which appeared to be commensurate with the requirements for construction.

MR. ALEXANDER. Mr. Pfister, given what you say in your—

[Discussion among Commission panel members.]

MR. ALEXANDER. Bechtel's affirmative action plan lists—and that is one category—a goal for June 1973 of 12 boilermakers, 12 percent boilermakers, and upgrades that goal to 23 percent one year later. How are you—it seems, through the process of negotiation, one is continually upgrading tha goals, yet saying there are less and less people available. I do not understand that.

MR. PFISTER. Well, let me see if I can explain that, Mr. Alexander. The actual employment has been better than the skills inventory would have indicated. No question about that.

MR. ALEXANDER. You have continued to increase the number of Navajos employed over this period of time?

MR. PFISTER. Yes. One of the reasons why is that the tribe has taken on some affirmative obligations concerning the—locating of people with skills required for the Navajo project. So I will readily concede that we have redoubled our efforts as a result of negotiations. No question about that.

But the tribe, for the first time, has also taken on some affirmative obligations, and I think we are seeing the benefits of joint effort and that employment is a little better than would be indicated by the results of the skills inventory.

MR. ALEXANDER. Well, considerably better, I would say, considering how you have painted the skills inventory, the last one.

MR. PFISTER. Considerably better than the last skills inventory, yes. I don't believe, nor have I intended to imply, that I felt the last skills inventory was representative of the unemployed skilled Navajos on the reservation.

MR. ALEXANDER. Mr. Lacey, I would like to follow something up with you. Throughout the day yesterday, economists, local people on the reservation, and others have described the Navajo Nation as close to third world countries, underdeveloped nations.

Now, your company builds around the world, publicity about building in the Middle East, building in Asia, and so on. What do you do for employment when you go there? Do you take everybody with you? Do you use local persons? How does it differ from being on the Navajo Reservation?

MR. LACEY. Well, it varies so greatly from locality to locality that I don't think I could generalize. I will say that it has changed almost 100 percent since—in the past 20 years, since the end of World War II. It was common for American expatriate craftsmen to go abroad and be the skilled laborer in underdeveloped countries. That is no longer the case. These countries have, in that 20 years, developed most of the necessary skills to do this type of construction.

And I said I couldn't make a general statement and I can't. But, today, we do not take large numbers of craftsmen to foreign countries to complete a job. Those countries, for the most part, provide those skills through subcontractors, labor brokers, and organizations within their country.

MR. ALEXANDER. And these are places with skill levels about the same as the Navajo Reservation? The same? I'm talking about places like the Middle East where the educational levels are lower and you can't, I'm sure, find a whole flock of union electricians?

MR. LACEY. I take that to be a statement on your part.

MR. ALEXANDER. It's a question.

MR. LACEY. I'm not familiar—I have never worked overseas, and I don't feel that I could respond to that.

MR. ALEXANDER. Okay. Mr. Chairman, I have no further questions at this moment.

ACTING CHAIRMAN HORN. Commissioner Rankin.

COMMISSIONER RANKIN. Mr. Pfister, on the skills test, what part does education play in skill? If a man comes to you with, say, a college degree and might not have a skill as a mechanic, could you use the man?

MR. PFISTER. Yes.

COMMISSIONER RANKIN. Is that part of the skill? I mean I was just interested in it.

MR. PFISTER. No, not in my judgment, nor in the skill inventory that was made, although they were asked what educational level they had attained, if they demonstrated work experience in a particular area and, as a result of an interview, demonstrated adequate understanding of a particular skill, they were listed as being probably skilled in that particular craft.

COMMISSIONER RANKIN. What would you do with a University of Oklahoma graduate if he comes in with an A.B. degree in liberal arts and he doesn't know how to use a lathe or anything like that, but he has a good transcript as far as grades in liberal arts? What would you do with a man of that character?

MR. PFISTER. If he was interested in becoming a craftsman, we would try to get him into the apprenticeship program and indenture him into a craft that he has expressed an interest in. If he had the qualifications that you hypothecate, we would hope that he would be interested in a nonmanual job, and I'm sure we would find a place for him.

COMMISSIONER RANKIN. You could find—have you ever turned up anybody like that?

MR. PFISTER. Yes. We have offered jobs to college graduates. And my understanding is that Bechtel Corporation has some Navajos employed in their professional ranks.

COMMISSIONER RANKIN. Well, as a professor's curiosity, how well have they done, these liberal arts graduates?

MR. PFISTER. I would prefer not to answer that question. I am not an expert on how liberal arts people do in the power business. Mr.—or Commissioner Rankin.

COMMISSIONER RANKIN. Well, I was hoping that they were doing very well.

MR. PFISTER. I'm sure they are.

COMMISSIONER RANKIN. In your original contract, did you have a renegotiation clause in it?

MR. PFISTER. No, there is not a renegotiation clause. There is a provision in terms of the rentals to be paid.

And I would like to clarify a statement that Commissioner Freeman made. Consideration for the lease agreement was more than $90. It provides for $160,000 per year for a 25-year period. That rental is then adjusted at the end of 25 years, depending upon adjustments in the Consumer Price Index.

That, however, did not represent the total consideration paid by the lessees for the interest acquired under the lease agreement. For example, there was a quarter-million dollars donated to the Navajo Community College in one lump sum. There was a commitment to pay $25,000 a year to Navajo Community College for a period of 5 years. There was a commitment to use coal located on the Navajo Indian Reservation for the power plant.

There were other payments, including a $100,000 payment for a transfer of an interest in the, security interest in the fuel supply of Peabody Coal Company, and I could go on. There were substantial considerations for the lease, and there is a provision in the lease which adjusts the rental after a 25-year period based on the Consumer Price Index.

COMMISSIONER RANKIN. Well, the renegotiations that have taken place, are they forced on you, or do you do it out of the goodness of your heart, or, you say your contract has been renegotiated, you mentioned several times.

MR. PFISTER. We are in the process of renegotiating the preferential employment provisions.

COMMISSIONER RANKIN. Yes.

MR. PFISTER. And our reasons for doing that are mixed. First of all, we recognize that—well, let me go back a minute and say that between the time that we negotiated the lease agreement and our current negotiations, there was a change in administration on the Navajo Indian Reservation.

And some of the people that were elected ran on a platform of renegotiating certain contracts that were in existence and had made political commitments to that effect. So we recognized the pressures on them. We also recognized that it is incumbent upon us to try to get along with the Navajo Tribe. Attitudes have changed on preferential employment between 1969 and 1973. We recognize that. Our own attitudes have changed.

We were also requested, in a very forceful manner, by the Secretary of the Interior in 1972 to renegotiate the preferential provision—preferential employment provision of the lease.

So our reasons for renegotiating include all of those, Commissioner Rankin.

COMMISSIONER RANKIN. Well, as you hire Navajos, do they have to join the union, or do you have nonunion employees that you employ? You see, I do not know this.

MR. PFISTER. There is no requirement that any Navajo, both during construction or operation, join the union. Arizona is a right-to-work State. All of the collective bargaining agreements that apply, both for operations and construction, must be compatible with Arizona law. And, although the construction contracts require that people hired go through the hiring hall, there is no requirement that they join the union.

COMMISSIONER RANKIN. In practice, do they join the union, or do they remain nonunion?

MR. PFISTER. Let me speak to that insofar as Salt River project is concerned. In practice, I would say that the majority of them do join the union after they have had an opportunity to determine what the union may or may not be able to do for them. We do have, at the Navajo plant, employed on Salt River project's operating force, a majority of union Navajos.

COMMISSIONER RANKIN. You take an impartial position on whether they join or not, is that correct?

MR. PFISTER. Yes, we do, Commissioner.

COMMISSIONER RANKIN. Thank you.

ACTING CHAIRMAN HORN. Commissioner Ruiz.

COMMISSIONER RUIZ. Was there any special reason why the Secretary of the Interior had to be, as you put it, very forceful in calling attention to the preferential clause? Had there been some complaints filed with respect to this neutral attitude? Why was the Secretary of the Interior very forceful?

MR. PFISTER. I will have to surmise part of the reasons, Commissioner.

There were some EEOC complaints filed, I believe, in the spring of—or the fall of 1971 against Salt River project, Bechtel Corporation, and Morrison-Knudsen. The DNA, a local agency that represents individual Navajos, represented the complainants in those EEOC complaints.

There was apparently some delay in the processing of those complaints, and it is my understanding that Chairman MacDonald, in November of 1971, wrote a letter to William H. Brown, III, Chairman of the EEOC, requesting prompt action on these EEOC complaints. I believe he also wrote the Secretary of the Interior although I cannot confirm that of my own knowledge.

Shortly thereafter, we were notified that we would be subjected to a joint investigation by representatives of EEOC and the Office of Federal Contract Compliance in the Department of Interior. That investigation did take place on the period of January 10 to January 21, 1972. It was—the results of that investigation were reported on March 9, 1972, and if my memory serves me correctly, it was shortly following the March 9, 1972, report that we received communication from the Secretary's office requesting that we immediately engage in negotiations with representatives of the tribe, with a representative of the Office of Federal Contract Compliance as an observer and mediator.

COMMISSIONER RANKIN. Then, as I understand it—

ACTING CHAIRMAN HORN. Excuse me. Could I ask counsel, do you feel, Mr. Alexander, that it is necessary for us to have Chairman MacDonald's letter to the EEOC as part of the complete record here?

MR. ALEXANDER. We will obtain that from the chairman's office.

ACTING CHAIRMAN HORN. All right, it will be introduced as Exhibit 26.

[The document referred to was marked as Exhibit No. 26 for identification and received in evidence.]

ACTING CHAIRMAN HORN. Go ahead.

COMMISSIONER RUIZ. Do I understand then that it took a letter from Chairman MacDonald which precipitated the bringing on of this investigation?

MR. PFISTER. Commissioner Ruiz, I don't know what happened in the EEOC or the Department of Interior. All I can say is that shortly after Chairman MacDonald's letter, there was an investigation.

COMMISSIONER RUIZ. Now, you have made reference to the fact that you have submitted your program to the Navajo Tribe which was not approved by Chairman MacDonald. Have you spoken with Chairman MacDonald and verified with him—and he has been present today at the hearing—the hearsay reasons given to you as to the lack of goals and timetables? Have you discussed that matter with Chairman MacDonald any more?

MR. PFISTER. Commissioner Ruiz, the answer is, no, I have not. I have discussed the matter with the general counsel's office and Mr. George Vlassis in October or November of 1972 after I read the newspaper accounting quoting Chairman MacDonald.

Mr. Vlassis told me that the tribe was in the process of employing an executive director for ONLR and that, immediately following the employment of that executive director, he would arrange for us to get together and resume our negotiations on those areas that Chairman MacDonald found unacceptable.

COMMISSIONER RUIZ. Have negotiations been resumed?

MR. PFISTER. They have.

COMMISSIONER RUIZ. Are you an agency of the State of California—of the State of Arizona?

MR. PFISTER. We are a political subdivision of the State of Arizona, yes.

COMMISSIONER RUIZ. Are you considered to be a public utility?

MR. PFISTER. We do supply or serve a public utility function. In Arizona the term "public utility" is generally used to denote an investor-owned utility. We are a consumer-owned utility, regulated or subject to the laws of the State of Arizona.

COMMISSIONER RUIZ. Now, in addition to the $900 million which the Bechtel Corporation, Power Corporation, will use by May 1976, do you have an idea of how much money your organization intends to spend by May 1976?

MR. PFISTER. On this particular project?

COMMISSIONER RUIZ. Yes.

MR. PFISTER. Let me clarify something, Commissioner. The $900 million is the total of all of the construction activities including the generating station which is Bechtel Power

Corporation's portion of the job. That totals approximately $610 million.

COMMISSIONER RUIZ. I see.

MR. PFISTER. So the $900 million includes all expenditures by anyone related to this particular project.

COMMISSIONER RUIZ. Now, what proportion of that $900 million is funded by the Government?

MR. PFISTER. The United States owns 21—I'm sorry, 24.3 percent, or has a beneficial interest in 24.3 percent of the generating station and the railroad. The percentages in the transmission line differ and I don't have that information currently with me, but I would estimate that of the $900 million approximately 24 percent is being funded by the United States Government.

COMMISSIONER RUIZ. Now, last week, President McDaniels of the Southern California Edison Company, received a Golden Aztec Award from the Mexican American Opportunities Foundation because of all of the organizations the Southern California Edison Company, a public utility, had hired the most referrals, but it didn't receive the award for that. The award was given by virtue of its affirmative action program where it had affirmatively given positions all the way up to the top echelon to peoples that were referred by the Mexican American Opportunity Foundation as trainees.

Have you made any contact with any manpower foundation funded by the Federal Government for purposes of solving this sticky problem of trainees, getting trained help?

MR. PFISTER. Yes, we have.

COMMISSIONER RUIZ. And what are the names of those manpower groups that you have contacted?

MR. PFISTER. We have worked through the various agencies of the Department of Labor, we currently have funded a JOBS [Job Opportunities in the Business Sector] entry program through the Department of Labor. This is Bechtel Corporation. During the period of time of the construction of the railroad, Morrison-Knudsen [M-K] had funded, a JOBS '70 program and the title was changed about a year ago. Salt River project has been in touch and Bechtel and M-K have been in touch with the BIA Employment Department. We have been in touch with the job developers on the reservation, which I understand receives partial funding from the United States Government.

COMMISSIONER RUIZ. May I interrupt you? Were you here when the BIA people said that they had trained 5,000 people that had been referred—not necessarily to your organization—but that none of them had been hired?

MR. PFISTER. Commissioner Ruiz, I was here when they testified. I believe that you will find that there are people that are employed by both Salt River project, Bechtel Corporation and M-K, that have had BIA training. But let me point out that most of the BIA training with which I am familiar does not qualify, generally does not qualify a Navajo to enter into a journeyman level position in any kind of construction.

COMMISSIONER RUIZ. I only mentioned BIA because you were going through a series of manpower training programs and I got that information from you. Now, which of these training programs would apply to your organization?

MR. PFISTER. Commissioner, the training programs that were funded by the Department of Labor specifically for this job were the ones that pertain specifically to this project.

COMMISSIONER RUIZ. And which are those? Those are the names I wish to know.

MR. PFISTER. That is the JOBS entry program and the JOBS '70 program.

COMMISSIONER RUIZ. How many references have been made by the JOBS entry program to you?

MR. PFISTER. Perhaps I should explain the JOBS entry program. This is a program where a specific number of trainees are employed and the purpose of that training program is to permit them to pass the apprenticeship test so that they may be indentured and become apprentices.

COMMISSIONER RUIZ. Yes.

MR. PFISTER. And there are, in the JOBS entry program that Bechtel has under way, 25 slots, and I'll have to call on Mr. Lacey to tell you how many of those slots are currently filled.

COMMISSIONER RUIZ. Will you answer that question, sir, of the 25 slots, have they been trained already?

MR. LACEY. Of the 25 slots, 22 have been filled and the training program is proceeding at this time.

COMMISSIONER RUIZ. Twenty-two have been filled. Have there been any references made from those slots as yet and employees resulted as a consequence?

MR. LACEY. Before—as a condition of the program, to get the Federal funding, we have to exhibit evidence of union cooperation in the program.

COMMISSIONER RUIZ. Then you don't use Arizona people? You just mentioned union. In the slots?

MR. LACEY. We use Navajo people in the slots.

COMMISSIONER RUIZ. Very well. Proceed. I'm sorry I interrupted you.

MR. LACEY. We obtain commitments from the building and trades unions to employ all of the trainees who successfully completed the course.

COMMISSIONER RUIZ. Now, of those that have successfully passed the course, presently how many are employed?

MR. LACEY. Let me explain that it was a 9-months program. The program is not completed. They are still in training now. It is proceeding well enough that we anticipate at this time that we can shorten what was originally thought to be a 9-month program. We think we can shorten it to 6 months, at which time these 22 trainees will be indentured into various craft unions.

COMMISSIONER RUIZ. Your answer is that up until this day not a single one has been as yet employed?

MR. LACEY. They are being trained and they are being paid to be trained.

COMMISSIONER RUIZ. But they haven't been employed yet?

MR. LACEY. They are receiving the same wages as a first-year apprentice.

COMMISSIONER RUIZ. Now, with respect to the other organizations, JOBS '70 program, how many slots do you have on that one?

MR. PFISTER. Commissioner Ruiz, I don't have the current information. That was a program which was conducted by Morrison-Knudsen and it was basically the same thing. Navajos were employed. They went into a training program. Part of their time was spent actually working; part of their time was spent training. Following the completion of their training they were indentured into the apprenticeship program for whatever skill they had indicated a preference for, and I do not have the number of people that were involved in the JOBS '70 program, but we can furnish that to you at a later date.

COMMISSIONER RUIZ. I think that the Government would be interested in both programs, the JOBS entry program and the JOBS '70 program, and if the Chairman will indicate at this juncture a possible exhibit I would appreciate it as to the number actually employed.

ACTING CHAIRMAN HORN. All right.

COMMISSIONER RUIZ. As a consequence of those training programs.

ACTING CHAIRMAN HORN. Before we enter that, let me ask counsel, in Mr. Lacey's prepared testimony he notes that the Commission has been given a copy of the company's proposed conciliation agreement which has been accepted by EEOC and DNA. Has that been entered as an exhibit?

MR. ALEXANDER. No.

ACTING CHAIRMAN HORN. Well, let me enter it now as Exhibit 27, and the request of Mr. Ruiz will be Exhibit 28.

[The documents referred to were marked Exhibits No. 27 and No. 28 for identification and received in evidence.]

COMMISSIONER RUIZ. One more question, Mr. Chairman.

ACTING CHAIRMAN HORN. Yes, go ahead.

COMMISSIONER RUIZ. In the operating phase of the enterprise, what will constitute in numbers a full complement of employees with relation to your goal of 45 percent Navajo Indians?

MR. PFISTER. Commissioner Ruiz, we'll have approximately

350 full-time employees during the operating phase after all three units are in operation, and it is our goal that 45 percent of those will be Navajos.

COMMISSIONER RUIZ. Thank you.

ACTING CHAIRMAN HORN. Commissioner Freeman?

COMMISSIONER FREEMAN. Mr. Pfister, you were referring to the comment which I made about the $90.00 per acre and you added some additional figures which I believe would total about $3 million. Even at the rate of adjusting it downward from $900 million to $600 million, it would still be a considerable difference between $3 million and $600 million.

You have stated that your company is a consumer-owned utility. I'd like to know if the Navajo Nation owns any interest in this company?

MR. PFISTER. Commissioner Freeman, they do not. By statute the owners of land within approximately 240,000 acres located in metropolitan Phoenix are the electors and shareholders of the Salt River project.

COMMISSIONER FREEMAN. Would you have information as to the income of the Salt River project from the past year?

MR. PFISTER. Yes. The Salt River project has gross revenues in 1972 of approximately $120 million and had net revenues of around $12 million to $13 million for 1972.

COMMISSIONER FREEMAN. Well, when you compare the net and even gross income of the project which is obtained from the Navajo Reservation and then we review the employment record where we are talking about jobs, and even the jobs that are held represent peanuts going to the Navajo Nation as a result of what the two companies are taking from the Navajo Nation. Is that not correct?

MR. PFISTER. No, Commissioner Freeman, I would not agree with that at all. The compensation which the Navajo Tribe receives as a result of the Navajo project includes several aspects, one of which are the lease rentals, but the most significant of which are the royalties that are paid on coal which is mined for the Navajo generating station. Royalties of 20 to 25 cents per ton are paid on each ton of coal that is mined and that income will represent a substantial amount of money being paid to the tribe as part of the Navajo project. The wages—

COMMISSIONER FREEMAN. Just a minute. You pay 25 cents a ton for coal. What do you sell coal for?

MR. PFISTER. Commissioner Freeman, we do not sell coal; we purchase coal from Peabody Coal Company and their cost of coal to us includes an amount for the royalties to be paid to the Navajo Tribe and the Hopi Tribe.

COMMISSIONER FREEMAN. How much is that? What is the price of that?

MR. PFISTER. The price for coal is around $4.00 to $5.00 a ton.

COMMISSIONER FREEMAN. Now, 25 cents per ton as against $45.00 a ton?

ACTING CHAIRMAN HORN. No, $4.00 to $5.00 a ton.

COMMISSIONER FREEMAN. $4.00 to $5.00 a ton. What percentage is that now?

ACTING CHAIRMAN HORN. Well, it's one-twentieth, isn't it?

COMMISSIONER FREEMAN. One-twentieth? Again, sir, I'm saying that you are taking from the Navajo Nation—

[Applause.]

ACTING CHAIRMAN HORN. There will be no demonstrations.

COMMISSIONER FREEMAN. —25 cents a ton and paying—the point that I am making is that your resistance to the chairman's request that the Navajo be employed seems without foundation—

MR. PFISTER. Commissioner Freeman,

COMMISSIONER FREEMAN. —on any basis.

MR. PFISTER. Commissioner Freeman, I don't believe that we have indicated a resistance to employing Navajos. Indeed, we have been engaged in negotiations and affirmative action efforts to fulfill our obligations to the Navajo Tribe. We feel that we have acted in good faith. We feel that we have accomplished a great deal. We do have disagreements with the tribe, particularly over the number of qualified Navajos that are available.

COMMISSIONER FREEMAN. Sir, on the basis of the fact that the only thing they are getting is a job, that the qualified, "qualified," which again I will say as I have said in other hearings, applies only when you are talking about a minority, and that if the good faith is really to be demonstrated you would give them employment and then train them while they are on the job.

MR. PFISTER. Commissioner Freeman—

COMMISSIONER FREEMAN. Such a company could do this. If you really mean that you want not to exploit the Navajo Nation, if you have a commitment to do this, you can.

MR. PFISTER. Mrs. Freeman, we have done precisely what you suggest that we should do. We have given employment opportunities to a substantial number of Navajos who are not qualified to meet our requirements at the time they were employed, and we have been engaged in a very extensive training program to train them to handle the tasks that we require, either of a minority or of a nonminority.

COMMISSIONER FREEMAN. I have before me the conciliation agreement which has not yet been signed, I understand, but at least which you are supposed to have agreed. I would like to know to what extent have you started carrying out any of the proposals to which you have indicated agreement?

MR. PFISTER. Mrs. Freeman, that is a conciliatory agreement which has been offered by Bechtel Corporation and I would prefer that Mr. Lacey respond to that.

COMMISSIONER FREEMAN. Mr. Lacey, would you respond to this, please?

MR. LACEY. Would you repeat the question, please?

COMMISSIONER FREEMAN. I have before me the proposed conciliation agreement which provides for training, upgrading, et cetera. I believe you understand what the provisions are, and I'd like to know the extent to which you have already started any of these acts that are proposed in this agreement?

MR. LACEY. Mrs. Freeman, the conciliation agreement concerns the 23 individuals who filed with the EEOC. We submitted our conciliation agreement 3 months ago. We are at this time still waiting to hear the response of the representatives of the 23 complainants.

COMMISSIONER FREEMAN. Mr. Lacey, it has been our experience that whenever there have been 23 individuals who have filed a complaint there probably could be 100 who have been victimized but not complained. So what we would want to know is what has been your policy and what has been your practice with respect to all of the employees, the training, the upgrading. These 23 were the brave souls, but the others who were similarly situated, what have you done with respect to them?

MR. LACEY. I'd like to point out that we have discussed some of our training programs. Our primary training program is our apprenticeship program of which we have 129 trainees now, of which 127 are Navajo. We are currently training in the construction force, Bechtel Corporation's construction force, on the Navajo generating station, 155 Navajo trainees.

COMMISSIONER FREEMAN. One of the concerns which I expressed yesterday was that there be training, on-the-job training of paraprofessionals, professionals, managerial, et cetera. Does your company undertake any of that at all?

MR. LACEY. Yes. Currently on the job we have 10 professional trainees.

COMMISSIONER FREEMAN. Navajo?

MR. LACEY. Navajo professional trainees.

COMMISSIONER FREEMAN. Which classifications?

MR. LACEY. Engineers and administrative personnel.

COMMISSIONER FREEMAN. What is the total number of professional and managerial employees that your company has?

MR. LACEY. Of the engineering and professional employees we have a total of 240, of which 57 are Navajo, and 10 of the 57 are professional trainees. These trainees were actively recruited from universities in the area, amongst other sources.

COMMISSIONER FREEMAN. Do you have any plans for improving the situation, increasing the number?

MR. LACEY. Yes, we are working on it continuously.

COMMISSIONER FREEMAN. Thank you.

ACTING CHAIRMAN HORN. Let me, Mr. Lacey and counsel, review a couple of matters. Let me preface it by saying that my

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first job after I got out of graduate school was as assistant to the Secretary of Labor, James P. Mitchell, in the Eisenhower administration, and he had a phrase that I think might be appropriate here, and that is that there isn't simply business and labor at the bargaining table, but there's a third party at the bargaining table, and that's the public. And that's what I want to pursue because I think too often in modern industrial society I have a hunch that big labor and big business get along awfully well despite their annual or semidecade bargaining sessions.

MR. LACEY. I wish that had been my experience.

ACTING CHAIRMAN HORN. Yes. And I just wonder about the public interest after some of these bargains are made.

Let me review, Mr. Lacey, some of your prepared testimony. On page 3 you say "by way of background as the Commission may be aware, the Bechtel Corporation is a union contractor and all of the company's projects in the United States and Canada are constructed with union labor. As a union contractor the company has entered into agreements with the internationals of the building trades unions."

Then you go on to say later, "These agreements therefore have the effect of making all of the company's projects union jobs and as such they provide the local hiring hall of the various unions shall be the exclusive source of manpower for the company's projects."

Then you review the experience, the attempts to make certain adjustments in order to help in recognizing the Navajo preference as such. You point out on page 8 that those hiring halls were either in Phoenix or Flagstaff, and you recognize it is difficult for the Navajos to get in to sign up, and that through the Bechtel Corporation's efforts the procedure has been modified and that now, as you say on page 9, "Navajos may keep in contact with various hiring halls by either telephone or mail. While this may not appear to be too significant to persons not familiar with construction it in fact is an important departure from established union procedures." And you of course note the disgruntlement at the end of your prepared statement of some of the non-Navajo members of building trades unions which led to a wildcat strike.

Now, what I want to lead to is, you obviously have certain labor agreements that apply to all your work nationally that you've entered into with international unions?

MR. LACEY. Correct.

ACTING CHAIRMAN HORN. You have recognized earlier in your testimony that, since Arizona is a right-to-work State, you do abide by the law of the State when a particular project is construction in that State?

MR. LACEY. That's true.

ACTING CHAIRMAN HORN. Now, I take it, one of the loopholes in the so-called Arizona right-to-work law, and I don't know, this came as news to me, and I'm really not that familiar with it, is that even though you might be a right-to-work State and even though a corporation with international and national labor agreements will come to that State and conform with that law, which is appropriate under Section 14-B of the Taft-Hartley Act, the fact is that the international agreement can still bind that right-to-work State so that nonunion members have to go through the union hiring process. That apparently is the Bechtel Corporation's understanding of the law.

MR. LACEY. That is my understanding of the law, that the hiring hall is legally constituted in the State of Arizona.

ACTING CHAIRMAN HORN. In other words—

MR. LACEY. That's my understanding of it.

ACTING CHAIRMAN HORN. Well, that's an interesting loophole in the law because what it leads to is not only the inconvenience you quite ably pointed out and that you've made some progress with, but obviously there's a lot lost between a Navajo writing or phoning or going physically to a hiring hall. It's like somebody trying to buy a house in the suburbs, how do you prove what transpires there unless you've got checkers and watchers and cassette tape recorders and everything else? And I guess what I'm getting to is, is it inappropriate under your international agreements for Bechtel to hire directly at the gate?

MR. LACEY. It's inconsistent with our national agreements.

ACTING CHAIRMAN HORN. Is it illegal?

MR. LACEY. I'm not certain I can answer that question.

ACTING CHAIRMAN HORN. Well, I would like frankly for counsel to pursue with counsel of the Bechtel Corporation the question I'm asking because what we have here—and I can understand this in modern personnel practice—is that the union is essentially doing the job which the personnel office does at the corporation when they hire clerical staff and professional staff, and I wonder—it seems to me if the Bechtel Corporation is going to enter into agreements with the union to do its personnel work, and there's a suspicion that those hiring halls are used to discriminate against what is a legal hiring preference clause related to American Indians, Navajos, which is very unusual, we're not just talking about affirmative action good faith attempts; we're talking about a legal requirement, as I understand it, which puts it in a much different category.

I think it ought to be pursued that we can't just have buckpassing between the unions and the corporation because, as I said earlier, there's a third party at this bargaining table and that's the public interest. And the public interest until changed by law is that there's a Navajo hiring preference. So, I would like our General Counsel to pursue that with general counsel of the Bechtel Corporation, enter the answer we get on those questions as Exhibit 29 in the record.

Are there any further questions by the members of the Commission?

Mr. Buggs?

MR. BUGGS. Only one short question.

Mr. Pfister, earlier in your testimony you indicated—you made some statement with reference to the length of time that it takes to train a person to operate a generating plant. In what context did you make that statement? Do you recall?

MR. PFISTER. No, I can't quite recall except I believe it was in response to Mr. Alexander's question as to why our goal for employment during operations was only 45 percent, and I believe I was trying to illustrate that it took a substantial period of time to train an operator, whether he be Anglo, minority, or Navajo—

MR. BUGGS. That was 6 to 8 years, as I recall?

MR. PFISTER. That is correct.

MR. BUGGS. At what level of education does it take—at what level of education is that apprentice, that length of time based upon? A fifth grade, a high school education, a college education?

MR. PFISTER. It is not premised on any particular level of educational achievement. It really is the function of the man himself.

MR. BUGGS. Isn't that an awfully long time? People learn how to pilot spaceships in less time than that.

MR. PFISTER. There are people who do it in less time, including two Navajo operators who were going to be doing it in 3 years' time. If you take a general average of times, plus the opportunity for training—if you were to concentrate on training and do nothing but, and have the people also gainfully employed during a portion of the time, I'm sure it could be done in less time. But the policy of our management is that training, on-the-job training must include some gainful effort. And so it's a dual function that goes on, working and training. And under those—in that environment 6 years is the approximate length of time that we use for training for our Anglo operators.

MR. BUGGS. Is that a union requirement or a company requirement?

MR. PFISTER. Company requirement.

MR. BUGGS. Thank you.

ACTING CHAIRMAN HORN. Mr. Alexander, any further questions?

MR. ALEXANDER. No.

ACTING CHAIRMAN HORN. All right. Thank you very much for coming with us, gentlemen, and sharing your experience.

The panel on health care will—it's now 1:22—will be the opening panel in our afternoon hearings, and our afternoon hearings we will try to begin at 2:30, if possible.

Recess.

[At 1:22 p.m. the hearing recessed, to reconvene at 2:30 p.m.]

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TUESDAY AFTERNOON SESSION

OCTOBER 23, 1973

ACTING CHAIRMAN HORN. Dr. Bock, Dr. McKenzie, Dr. Conley and Miss Smith, please come forward.

And, ladies and gentlemen, for the benefit of the audience at the conclusion of this afternoon's session for those that speak Navajo, Dr. Billison will be available for translation.

Dr. Billison, you might wish to announce that in Navajo.

[Translation into Navajo.]

ACTING CHAIRMAN HORN. Thank you very much, Dr. Billison.

[Dr. George E. Bock, Dr. Taylor McKenzie, Mr. Gerald Conley, and Miss Beverly Smith were sworn and testified as follows.]

TESTIMONY OF DR. GEORGE E. BOCK, MEDICAL DIRECTOR, NAVAJO AREA INDIAN HEALTH SERVICE; MR. GERALD CONLEY, HOSPITAL ADMINISTRATIVE OFFICER, SHIPROCK SERVICE UNIT; DR. TAYLOR MCKENZIE, CHIEF OF SURGERY AND SERVICE UNIT DIRECTOR, SHIPROCK INDIAN HOSPITAL, AND MISS BEVERLY SMITH, DIRECTOR OF NURSES, SHIPROCK INDIAN HOSPITAL

ACTING CHAIRMAN HORN. Please be seated.

Mr. Glick?

MR. GLICK. Thank you, Mr. Chairman.

May I ask each one of you to please state your name, your occupation, and your address for the record?

MR. BOCK. I'm Dr. George E. Bock, the medical director of the Navajo Area Indian Health Service. I am a physician.

MR. GLICK. Mr. Conley?

MR. CONLEY. My name is Gerald Conley. I am a hospital administrative officer at the Shiprock service unit, northwestern New Mexico.

MR. GLICK. Dr. McKenzie?

DR. MCKENZIE. Taylor McKenzie, M.D., chief of surgery at the Shiprock Indian Hospital and also service unit director.

MR. GLICK. Miss Smith?

MISS SMITH. I'm Beverly Smith. I'm the director of nurses at Shiprock, and I'm living in Shiprock.

MR. GLICK. Dr. Bock, may I ask you to begin this part of the testimony with a brief description of the medical facilities in the Navajo Area Indian Health Service?

DR. BOCK. The Navajo Area Indian Health Service has the responsibility for the 135,000 Navajos and other Indians in this vicinity. We operate six hospitals, one of them being an Indian Medical Center at Gallup, the remaining five being general medical and surgical hospitals.

We also operate 9 health centers and 8 school health centers and 18 what we call health clinics in the remote areas of the reservation.

We have a total staff averaging usually around 1,500 people working in the Navajo area, and this includes physicians, dentists, nurses, other health professionals, and the supportive staff in our various facilities.

MR. GLICK. Can you tell me how many of the staff, if you can break it down by professional and nonprofessional, and perhaps paraprofessional, are Indian?

DR. BOCK. We have a total staff, as I said, averaging around 1,500. At the last time we did this breakdown, we did it as of May of 1973 for our equal employment opportunity affirmative action plan, and at that time we had a staff of 968 American Indians and 555 either non-Indian, Anglo, or black, Spanish American, Oriental, or other, which gives a percentage at that time of 57.2 percent American Indian.

MR. GLICK. What percentage of those American Indians are in the professional category, nursing, and so forth?

DR. BOCK. We have in the higher echelon in commissioned officers, which are physicians and other professionals, we have four commissioned officers, males, American Indians. We have two GS-12 to 13 male and two female, four of those. We have a total of 42 in the 9 to 11 class, which are nursing positions, and we have a total of 190 in the GS-5 to 8 classification, which are usually nurses and licensed practical nurses, R.N.'s and licensed practical nurses.

And then in the lower echelon, GS-1 to 4, we have 55 males and 443 females. The reason for this is most of our nursing assistants, most of our driver-interpreters, all of our interpreters, all of our supportive personnel as far as the workers in the hospitals who are in the dietary sections, in the housekeeping sections, are Navajo, or Indian. I'd say 90 percent of our Indian staff are Navajo, of that 968.

MR. GLICK. Thank you, Dr. Bock.

Dr. McKenzie, it's my understanding that you yourself are a member of the Navajo Tribe? Is that correct?

DR. MCKENZIE. That's correct.

MR. GLICK. Dr. McKenzie, do you know of any other physicians or surgeons who are members of the Navajo Tribe?

DR. MCKENZIE. I understand that there is another one, a physician, not a surgeon certainly, but a physician, who is not currently working on the reservation.

MR. GLICK. But out of the entire tribe there are only two persons who have graduated from medical school?

DR. MCKENZIE. That's correct.

MR. GLICK. Thank you.

Miss Smith, and Dr. McKenzie also, I'd like to ask whether the Shiprock Hospital has an adequate number of nursing personnel and, if not, how does that lack of an adequate number of nursing personnel affect patient care?

MISS SMITH. We definitely have a shortage of nurses. There was a study, a CASH study done in 1969, which stated the need for 90 positions in nursing to properly staff the hospital at Shiprock. We have 56 nursing positions at the present time. In 1961 we had 54 nursing positions. We had 7 physicians and an average daily census of about 36. In 1973 we have an average daily census of about 76. We have 14 physicians, but we have had no increase in nursing positions.

ACTING CHAIRMAN HORN. Excuse me. Could you identify the CASH study and explain what that is?

MISS SMITH. The CASH study is—

ACTING CHAIRMAN HORN. What does that stand for?

MISS SMITH. It stands for the Commission on Administrative Services in Hospitals. The report of it is accepted by—probably accepted all over the United States, accepted by JCAH [Joint Committee on Accreditation of Hospitals] as a—

ACTING CHAIRMAN HORN. This is equivalent of an accreditation group in a university that sets standards and tries to see to what degree you are maintaining standards?

MISS SMITH. It's a method to determine the utilization of the nursing staff. This study was done in 1969 at Shiprock and took about 2 weeks, and it came up with some facts and figures which demonstrate the need for additional staff.

MR. GLICK. Does that relate only to nursing personnel, Miss Smith?

MISS SMITH. Yes, this CASH study is only in nursing.

MR. GLICK. How many beds does Shiprock Hospital have?

MISS SMITH. Seventy-five.

MR. GLICK. And how many nursing personnel are required for accreditation for a 75-bed hospital?

MISS SMITH. Well, according to this study we should have 90 positions.

MR. GLICK. I see.

MISS SMITH. We have 56.

MR. GLICK. I see. What effect does this lack of adequate nursing personnel have on the care that's given to the patients?

MISS SMITH. The nursing staff itself feels that they, although the nursing staff is a qualified staff, they feel that they are giving inadequate care, not even safe care. For example, in the OB unit where we have 12 beds for mothers, for women who have delivered babies, and 12 bassinets in a small area, with four isolettes for premature infants. The typical staff on that unit would be two nurses per 8-hour shift, one a registered nurse and one a licensed practical nurse. Due to the amount of staff we have, this is the only coverage we can give that unit.

JCAH standards state that in a high risk infant or premature baby the ratio of nurse to baby should be one to one. Our ratio has been as high as one licensed practical nurse to 18 babies, 8 of them being prematures.

As far as all of you are concerned, if it were your wife, let's say, having a baby, and the baby was a 2½ pound baby, you would want that child to be watched constantly and to receive the proper kind of care.

The babies at Shiprock very frequently are left alone. At the time of the delivery on that unit the one L.P.N. assigned to the nursery then must go into the delivery room to assist while a lady is delivering, therefore leaving the newborn and premature nursery totally uncovered. This is just an example on one unit of situations that are occurring on all the units, inadequacies on all the units.

DR. MCKENZIE. Perhaps, Mr. Chairman, if I could elaborate a little bit more on that point?

I think a number of other things need to be mentioned with respect to inadequate care. The physicians, for instance, feel if their patients do not receive adequate care, particularly when it relates to care of those patients who are acutely ill, say, much less to take care of routine dressings and routine care that needs to be provided to patients.

A number of tragic events have occurred simply because we have not had the nursing personnel to adequately staff the hospital, and I think it can be safely said that we have documented about three cases where infants, premature and infants died because there was nobody to take care of them.

One of the instances is that of an aspiration where a child—because there's not the personnel—is laid on its back and a bottle is propped up and child then aspirated and, of course, expired from that accident.

Another instance where patients are not monitored properly is the instance where a patient with a fractured skull, it was found necessary to put him in the hall on a stretcher; but, because there was not the nursing coverage to take care of this patient, the patient fell off the stretcher and, as I understand it, also the IV bottle or intravenous fluid bottle came flying after him and broke on the floor.

These are the kinds of things that I think are inexcusable and should not occur at all but are a result of inadequate staffing.

MR. GLICK. Dr. McKenzie, were you ever forced to close down some beds, give up some beds because of a lack of nursing personnel?

DR. MCKENZIE. Yes, I think this has occurred in other areas of the Navajo Reservation as well. Because of our inability to take care of patients properly we found it necessary to close down or to take out of circulation 12 adult beds so that the nurse-patient ratio could be reduced to more manageable levels so that patients can be cared for.

Now, the other difficulty with this is that this removes 12 beds from the acute care that is necessary for these people because we do practice what we consider acute care medicine, and by removing 12 beds we have removed effectively the ability to take care of 12 more acutely ill patients.

MR. GLICK. Dr. Bock, would you care to follow up on what Dr. McKenzie has said with respect to the shortage of personnel in other facilities?

DR. BOCK. To make the record complete concerning nursing, the CASH studies that were done and those studies applied to our other facilities showed that we had a total deficit of 273 nurses in the area for the six hospitals that were studied.

In getting on to the rest of the question, what has happened in Indian Health Service is that when we first took over in 1955 from the Bureau of Indian Affairs, an example on the Navajo at that time, there were 436 staff. There were seven physicians and one dentist. The care was very poor. The infant mortality rate at that time was 90 per 1,000 live births.

Through the years, in the 18 years that Indian Health Service has been in existence, there has been a tremendous increase in staff and in facilities. However, we should look at what the total need is and the total need is a tremendous need. The amount of medical care being provided reaches about 50 or 60 percent of that need. So that we have a tremendous deficit still existing in what is needed and what we are providing.

So that at this point in time we can look back with some feeling of accomplishment, but we look at the present and the future with a feeling of much frustration and difficulty in trying to rationalize what Dr. McKenzie has been saying, that in every one of our facilities there is inadequate staff to do the job that the Navajo people need us to do, and we have in a sense had a very interesting phenomenon occur.

When Indian Health Service first got started it was difficult to attract the Navajo people into the health delivery system of the non-Indian, the Anglo system. Then, as things went on, the kind of care that was given was good, and we attracted more and more people. Now, we have created a demand we can't meet. The people are in need of care; they come for care; they wait long hours, and they do not get the quality of care they should be getting in the system.

MR. GLICK. Turning specifically to Shiprock Hospital, Mr. Conley, I'd like to ask you whether in addition to shortage of personnel there is shortage of equipment?

MR. CONLEY. Mr. Glick, there is a tremendous shortage. For an example, the National Radiological Society recommends 5,000 procedures per technician per year. At Shiprock we have one machine, X-ray machine, two technicians doing 15,000 procedures a year, which is three times what the National Society recommends. So, yes, there is a need, and this of course, directly, has a direct adverse effect on the consumer in that this creates long waits when people are sent to this particular department for X-rays. They wait long hours, they become disgusted, they leave without getting this, which creates problems. Actually, we can justify three X-ray units. We have one.

Going to the other portion of your diagnostic services which is your laboratory, we are short on space; we are short on equipment. For example, we're authorized four laboratory technicians to perform some 123,000 procedures a year, which if you break that down per technician and by the day, it's an astronomical number.

Again, the National Laboratory Technologists Association recommends 850 to 1,000 procedures a month per technician. So here again, without adequate equipment and with the tremendous demand by the medical staff we are forced to send some 13,000 to 15,000 procedures a year out to contract laboratories because we don't have the equipment or the staff to do it, or neither do we have the room to perform these.

We can go on through each department and the shortage of equipment or the lack of equipment is evident in any of the departments that you have inside the walls of a hospital, which is really a small city.

Dietary, we need some additional equipment in there to transport the food to the patients to make sure that it's hot or cold, whichever is the case, and that it is palatable to the consumer when it reaches him. Any number of instances or cases, the equipment shortage is a very prominent factor in lowering, not necessarily the—well, it does lower the quality because when you work a laboratory technician doing two or three thousand procedures a month, that person is more apt to make a mistake in a procedure than if we had adequate staff and equipment to lower the number of procedures down to the national recommended number, 850 to 1,000.

MR. GLICK. Mr. Conley, do you think the existing Shiprock Hospital is large enough in terms of beds and other facilities to accommodate present and projected needs?

MR. CONLEY. Definitely not. For an example, we're running in the 60,000 figure of outpatient visits a year. We have five examining rooms for the physicians to use to see this number of people. Therefore, what we really need, of course, is the minimum of three examining rooms per physician so that they can keep up a rather—not hurriedly but keep a constant flow of patients. They would be able to spend more time with the patient. Therefore, of course, would increase their quality of care to the individual.

We need more examining rooms. We need more room for X-ray. We need more room for laboratory. We need additional room for educational purposes which we do not have. We need additional waiting room area. This is the outpatient side of the house.

So far as the inpatient side, the 75 beds, it's quite obvious it's inadequate. We have had as high as 10 to 12 consumers or patients lying in the hall either in beds or on a stretcher and this should never be.

MR. GLICK. Dr. McKenzie, have you ever had to restrict the kinds of laboratory procedures that staff physicians can request because of the shortage of personnel and equipment that Mr. Conley has described?

DR. MCKENZIE. That's correct. In a number of areas which directly affected the laboratory functions was that of the lack of personnel in the laboratory, laboratory personnel which necessitated the usage of overtime which, of course, we try to control our overtime usage because we have a set limit.

In addition to that, certain laboratory procedures which we do not have the capability of performing and which must be sent to outside laboratories. Some of the more complicated laboratory procedures, and because we did not have the contract medical care funds to cover these it was necessary, number one, to restrict the number of laboratory tests ordered so that we could stay within our contract medical care budget; and, in order to stay within the limits of our overtime utilization, it was necessary to restrict the time that the hospital laboratory was in operation. So that the doctors felt that there were times when patients who required extremely necessary laboratory procedures, that with this restriction they were not able to conduct the proper kind of diagnostic workup that the patient required.

So that for a couple of reasons, restriction in overtime utilization, restriction in hiring, and restriction in contract medical care budgets, we have had to curtail or limit the use of laboratory functions for a good part of fiscal year 1973.

MR. GLICK. Dr. Bock, I'd like to ask whether the conditions at Shiprock that Dr. McKenzie and Mr. Conley described are prevalent throughout the facilities on the resertation?

DR. BOCK. Mr. Glick, and Commissioners, I'd like to give just a brief sketch of what Dr. McKenzie is talking about as far as contract medical care and the rest of the operation.

We operate these hospitals and clinics, et cetera, and we have certain levels of expertise in these hospitals and the health centers and in the clinics. When we have a case that is beyond that level of expertise that needs additional—that needs care that we can't provide, we then have to go out and buy this care, and we buy this with what is called contract medical care money. Now, we only have so much of this money every year as we have so much of budget to run the ongoing program. And we get into a tremendous dilemma.

For instance, Dr. McKenzie related that beds were closed at Shiprock. Because of insufficient staff we had to close 26 beds at the Gallup Indian Medical Center where some of this expertise is available, but 26 beds had to be closed because we didn't have the kind of supportive staff to make safe care available.

We closed 34 beds at Fort Defiance Hospital for the same reason and the beds were closed at Shiprock, the 12 beds were closed at Shiprock and the 10 beds that have been closed at Winslow put together means that that number of beds which should be available to take care of Indian people in this area that need hospitalization are not there. So we have to go out and buy this care.

Then we have limitations in what we have for money to buy this care. So then the frustration is doubled. We have to provide the care; we can't do that. We have to buy the care; we're limited in doing that. So what ends up is that we are not being able to provide both the care in our own facilities that would have the ability to provide given the staffing to do it, and then we have to go out and buy this care sometimes at two to three times what it would cost us in our own facilities to do it because contract medical care is expensive.

Example, that Bernalillo County Medical Center, it's $155 a day for just the bed plus the additional care. So, in answer to your question, it's a very horrendous problem in that we have the inability to provide and then we have the inability to buy what we should be providing ourselves; and our specialists, our other physicians, our other professional staff become more and more frustrated because they don't have the ability to perform at the level that they have the competency to perform because of these limitations in budget and this can be frustrating.

MR. GLICK. Dr. Bock, do you have a copy of the budget for the Navajo area with you?

DR. BOCK. Yes, sir.

MR. GLICK. I wonder if I could introduce that into the record, Mr. Chairman?

ACTING CHAIRMAN HORN. Yes, it will be introduced as, I believe, Exhibit 29.

Let me ask before you go ahead, to clarify what you just said. You say you have the inability to provide. We understand that. And yet you have to buy the care. Does that mean as long as you go out and buy the care from outside vendors, in essence, that the funds are available for that, or are you restricted on that?

DR. BOCK. No, sir. We're very restricted on that.

ACTING CHAIRMAN HORN. But you're saying you could do it for half the cost if you had the proper beds, I take it?

DR. BOCK. If we had the supporting staff with the bed capacity we now have, we could be providing care in our own facilities which we are now obligated to go out and buy, and we buy that at two to three times what it cost us in our own facilities to provide it. And we do not have adequate funds to buy all the care that is necessary.

An example, sir. Last year we had a constraint on contract medical care authorizations which only allowed for emergency medical and surgical care being provided for those patients that we initiated the provision of care in our own facilities. So that if a Navajo patient was in Farmington, New Mexico, and was in an accident and went to the Farmington Hospital, we did not authorize payment of that because we didn't have the funds to pay for it. That was an obligation that the Farmington Hospital had to take.

ACTING CHAIRMAN HORN. Thank you.

Recorder, correct that to Exhibit 30.

[The document referred to was marked Exhibit No. 30 for identification and received in evidence.]

MR. GLICK. Mr. Conley, there is a national standard on ratio of staff, hospital staff to beds in hospitals, is there not?

MR. CONLEY. Yes, there is, Mr. Glick. The national staffing pattern for non-Federal hospitals is 2.9 per bed, which is the normal staffing pattern. Now, this does not include your medical staff because they are not normally, on the outside, a member of the particular—or an employee of the hospital. They have their own private practice. So we're talking of actual hospital employees, 2.9 per bed.

MR. GLICK. And what's the ratio at Shiprock Hospital?

MR. CONLEY. Well, we have 124 members on our hospital staff. This includes doctors, dentists, pharmacists, which if we were staffed according to the national staffing pattern, we would have 218 employees. So we have 124, which leaves roughly 94 employees that we are short throughout the hospital, Percentagewise, I wouldn't have any—I don't have any—I don't have it figured out. It's about 1.5—1½ to 1 rather than 2.9 to 1. So we're actually about half—staffed half as the national standard.

MR. GLICK. Shiprock has half the staff as a hospital on the outside is expected to have?

MR. CONLEY. Yes, and I might add that this 124 includes our outpatient department personnel which normally in your community hospitals and private hospitals you do not have an outpatient department. So therefore, the 1.5 includes outpatients, which is really—isn't a fair way. It would be less than 1.5, according to the national staffing pattern.

MR. GLICK. Dr. Bock, do you think that would be pretty much the ratio on the other inpatient facilities?

DR. BOCK. Yes, Mr. Glick. The areawide ratio on the Navajo now averages 1.6 to 1, whereas Mr. Conley said it should be 2.9 to 1, which is the acceptable average. There are many facilities in this country that have a staffing ratio of above 3 to 1. The acceptable one is 2.9. We have a 1.6 average.

MR. GLICK. Thank you.

Mr. Chairman, I have no further questions at this time.

ACTING CHAIRMAN HORN. Commissioner Freeman?

COMMISSIONER FREEMAN. Dr. Bock and Dr. McKenzie, I would like to trace this pattern that you have described here. How long has this condition existed of inadequate staffing in hospitals?

DR. BOCK. [Who] do you want to answer first?

When the Indian Health Service first took over, as I said, the staffing at that time was terrible. It was unbelievably terrible. It's bad enough now but it was, you know, that much worse then. We're talking about 436 against 1,500. The physicians were 7; now we have 108. The dentists were 1 and now we have 46.

What has happened throughout the years, Mrs. Freeman, which is very important, is that as more and more Navajo people came for services our outpatient load and our admissions went up precipitously, and for a period of time staffing, in a sense, tried to keep up with the increase; and then in the last few years staffing has plateued off, but the increase in outpatients and admissions has gone up. So that you are putting an additional burden on an already understaffed group.

So in their effort to meet this need they work extra hours. In nursing, we have nurses that work two shifts. We have physicians that work 18 hours a day. We have many of our professionals that put in almost a 16- to 18-hour day every day to meet this deficit.

COMMISSIONER FREEMAN. I can understand that there has been a great sacrifice on the part of the staff. What I'm trying to find out is to—what we are trying to find out is really where the buck stops.

What you are saying is that there have been inadequate facilities and that has prevailed over a long period of time. There's inadequate staff; that has prevailed over a long period of time. And what we need to find out is what, if anything, can be done about it and how soon something can be done about it because a critical stitution will not remain just critical. Something is going to pop at one time. You have described the need for more nurses.

Now, what I would like to know, is there a possibility of training nurse's aides, or additional L.P.N.'s within the facilities and funds available to you? Is that a possibility? Miss Smith, perhaps?

MISS SMITH. Actually—

DR. BOCK. Let me just make a quick answer. At the present time we have some training going on and this is—we can get to that later if you'd like as far as the specific types of training we have as far as L.P.N.'s and we also have training for medics and for others. However—

COMMISSIONER FREEMAN. When I say L.P.N., for the record I'm talking about a licensed practical nurse, and the R.N. would be a registered nurse.

DR. BOCK. We have much training going on. The frustrating part of that, Mrs. Freeman, is that we do not have positions made available from year to year to hire the people we've trained.

Example, last year we graduated 15 medics, 2 years of training, Indian medics that we trained at Gallup and throughout our area. They graduated. We were supposed to get 15 new positions in our budget to hire these people. We did not get these positions so we had to hire them with vacated positions, lapsed positions that we had in the area. So we in a sense took on the burden ourselves.

COMMISSIONER FREEMAN. Dr. Bock, over the years you are saying that you have requested an allocation for additional staff, additional medics and this has been denied, been rejected; is that correct?

DR. BOCK. It has been rejected, relatively. We've gotten some, but the magnitude of what we got is much less than what we need. We have identified last year we could use 166 new positions in hospitals and 162 new positions in field health. We got none of them.

COMMISSIONER FREEMAN. For the record will you indicate to which agency you address your requests?

DR. BOCK. At the present time, Indian Health Services addresses itself to Health Services and Health Services is an agency of HEW.

COMMISSIONER FREEMAN. Of the Department of Health, Education, and Welfare?

DR. BOCK. Yes.

COMMISSIONER FREEMAN. And the Department of Health, Education, and Welfare is the department that rejected the request; is that correct?

DR. BOCK. Yes. In addition, the Congress in its knowledge of our problem—and the Indian people appear before the Congress every year before the committees—last year added $6.208 million to the Indian Health Service budget. This was not released until June 13th of that fiscal year, which was just a few days before the end of the fiscal year.

COMMISSIONER FREEMAN. What you are saying is that the Congress appropriated the money and the Department of Health, Education, and Welfare refused to allocate it?

DR. BOCK. Yes.

ACTING CHAIRMAN HORN. And was it the Department of Health, Education, and Welfare or the Office of Management and Budget?

DR. BOCK. Accurately, the Office of Management and Budget and the executive branch.

COMMISSIONER FREEMAN. I'd like to ask a question about the possible use of nurse's aides and the extent to which they could be used if you had them for the watching of premature babies. Maybe Miss Smith could answer that.

MISS SMITH. We have in our area nursing aides who have had training. We have some L.P.N.'s who have had training whom we cannot hire because we don't have positions to hire them. So we actually have somebody to fall back on if we have a vacancy. We have somebody sitting right there to be hired, so we do have qualified people ready to work. We do have nursing assistants and L.P.N.'s and R.N.'s working on all the units.

COMMISSIONER FREEMAN. So there are persons who are qualified, willing, ready, and able to work if you had the funds?

MISS SMITH. Yes.

COMMISSIONER FREEMAN. When was the last time that you made your appeal to the Department of Health, Education, and Welfare concerning the situation as it exists here?

DR. BOCK. I make it about six times a year. Just the most recent one was written to Mr. Buzzell, who is the new Administrator of Health Services, and this letter went out September 5.

ACTING CHAIRMAN HORN. How do you spell his name?

DR. BOCK. Harold Buzzell, B-u-z-z-e-l-l-.

We make a yearly request to our headquarters and that's the copy of what Mr. Glick asked to put into the record, and in it we justify all of the things we've been talking about and where we would use the people if we got them, and how we would use them, and how we would use the money for contract medical care, and identify how that would be broken down. So that document that I gave to the record spells out exactly how these things would be done, and we produce this every year.

Every year I speak to the tribal council and give them an annual report of where we stand, and this is the same type of documented, statistically documented and supported as to what our needs are and what we get in our appropriation.

COMMISSIONER FREEMAN. Thank you.

ACTING CHAIRMAN HORN. Just to round out—excuse me, Dr. McKenzie.

DR. MCKENZIE. Mr. Chairman, if I may, perhaps I could describe another phenomenon that occurs in the management of the budget which eats into the monies that we get that is a peculiar phenomenon, which I don't quite understand, which I prefer to call "taps." I guess the official term now for it is now "short fall." But as the money comes down for the Indian Health Service, various departments, because perhaps they don't have their own money, dig into our monies and consequently, as I understand it, over the past 3 years the Indian Health Service budget has been shortchanged by about $1 billion.

DR. BOCK. In this area.

ACTING CHAIRMAN HORN. In this area alone?

DR. BOCK. In the Navajo area alone, as Dr. McKenzie aptly put it, a short fall in which our base budget is $1 million less over a 3-year period.

ACTING CHAIRMAN HORN. Over a 3-year period or annually?

DR. BOCK. Three-year period.

ACTING CHAIRMAN HORN. Let me follow up for a minute so we round out the budget portion here and try to add on to what Mrs. Freeman has begun in her very able questioning.

Let's talk about how we build up that budget and what formulas are available. I happen to head a public bureaucracy myself. I guess my first major speech as a university president was entitled "Ode to a Line Item Budget," and you can imagine what that contained. I suspect you are a victim of some of these similar formulas and other things that are used in budget building. So let's just go through it from the beginning for a minute.

When you ask for staff and when you ask for equipment, are there formulas that the Indian Health Service and HEW and OMB have applied nationally to all such similar requests, and that's used as the basis for your budget?

DR. BOCK. Mr. Horn, I can only—

ACTING CHAIRMAN HORN. Or can you just ask for anything you want?

DR. BOCK. I can only answer partially. We use staffing statistics which are nationally accepted as to what our need is.

ACTING CHAIRMAN HORN. All right. You use the accepted statistics that any public non-Federal or private hospital conceivably would use?

DR. BOCK. Right.

ACTING CHAIRMAN HORN. You don't have a special federally-designed formula that tells you what you can ask for on replacement equipment or what you can amortize, how many staff positions, what your doctor, nurse staffing ratio is, or do you?

DR. BOCK. I have to break that down. We do have a formula that we get as far as replacement equipment because they have a date of entry into the system and date of when they would become obsolete. So we do have the component.

ACTING CHAIRMAN HORN. Do you think that formula is adequate to meet your needs?

DR. BOCK. If we got the equipment that was identified in the formula, I would say it would be close to what we need. We don't get the kind of replacement that is identified in the formula.

ACTING CHAIRMAN HORN. Do you know offhand what the replacement equipment formula is?

DR. BOCK. No, sir.

ACTING CHAIRMAN HORN. Could you furnish that for the record? We will make that Exhibit 31.

[The material referred to, to be marked Exhibit No. 31, was received in evidence.]

Now, let's talk about people. You use, as I listen to this, standards that CASH and others would use nationally, and you state the actual needs, or are you given an allocation by, say, the regional office of Health Services Administration, or the national office that says, "We really don't care how you do it, you can set your priorities but here's the total amount of dollars we're going to give you for the forthcoming fiscal year."

DR. BOCK. Well, it's slightly more complicated than that. We have the ability prior to the fiscal year we are going into, the fiscal year we are in, to present what we feel should be the budget for the next fiscal year. And we use those various formulae to come up with what we mean as far as staff, equipment, and supplies, et cetera.

Now, up the line there are eight other Indian Health areas which do the same thing and that all goes into Indian Health Service headquarters which then puts it together to present as to what the needs are. Now, ultimately, the Presidential budget comes out and the Presidential budget in asense limits or does limit the total. And the only edge you can get on after that to come up to what you identified you should be getting in the first place is by going either for supplementals or by having Congress add to it.

ACTING CHAIRMAN HORN. Dr. Bock, you as director of the Navajo Area Indian Health Service, are you able to go in and personally lobby for your amount with the Administrator of Health Services or is that all done by your budget people and with paper passing back and forth?

DR. BOCK. Well, to be very fair, for the first time in my experience out here in 11 years, the Administrator of Health Services came out to visit the Navajo and this was in response to a letter that Dr. Wuaneka wrote.

ACTING CHAIRMAN HORN. This is the new Administrator, Mr. Buzzell?

DR. BOCK. Yes, Mr. Buzzell. And he was very impressed with the program and made a commitment that his first priority would be to get us the kinds of support that we need. And as I say, this was a new experience for us. He seems to be keeping his promise, from what I have heard.

Now, in answer to your question, I do have the opportunity to go in and make all our needs known to the Director of Indian Health Service at the Washington level and he has given me the ability to talk directly to Mr. Buzzell by bringing him out here, and Mr. Buzzell coming out. So in that sense there's been direct communication.

ACTING CHAIRMAN HORN. Fine.

Let me ask you now, in terms of buying health services from non-Federal vendors, that comes out of your budget, I take it?

DR. BOCK. Yes, sir.

ACTING CHAIRMAN HORN. Is that a separately budgeted item in the IHS budget?

DR. BOCK. Yes. We have a contract medical care line item.

ACTING CHAIRMAN HORN. Right. Okay. That's what I want to get to. You are on a line item budget. To what extent do you have the authority to transfer money between the various line items?

DR. BOCK. Five percent.

ACTING CHAIRMAN HORN. Five percent either way. So conceivably you could take that 5 percent and you could put it into additional staff personnel, could you? Five percent of your contract?

DR. BOCK. You cannot buy staff with contract medical care money.

ACTING CHAIRMAN HORN. All right. Could you go the other way and take your staff budget and put it into contract purchases? Could you move it the other way, or is it a one-way limitation?

DR. BOCK. Theoretically, I'm sure we could do that. Practically, it's the other way we want it.

ACTING CHAIRMAN HORN. Okay, Fine. Let me ask—Mr. Ruiz?

COMMISSIONER RUIZ. Yes. As I get the picture, here we have a stationary hospital, a fixed location, which is being overburdened with outpatients who are coming in and increasing numbers to this fixed location which also encompasses perhaps eight clinics that may be having the same trouble by virtue of the recognition by the general inhabitants that there is a service to be performed there.

I believe you have a unique situation that you might be able to take advantage of with relation to the budget, and it doesn't fall in the general form of the other States who have a local tax base, have county, city, municipal hospitals and services, but you have a nation here where you have extreme distances and that means inaccessibility to remote areas.

Now, I was talking about a year ago with persons in HEW, and I was informed that there are emergency truck units which are more than just ambulances to transport emergency cases around to these fixed locations which are being assembled with built-in laboratory units, X-ray machines, for routine services. Some of these are being assembled in Orange County, California. I was informed at that time that HEW, upon proper application—that is to say, personnel in HEW—that they would consider applications to fund this type of mobile unit.

My question is: Have you probed into that particular area at all?

DR. BOCK. We have some mobile units now in operation, not from that source. I did not know that source and I would think that, if it is an HEW source, we are sometimes precluded from applying for certain kinds of things that are available as another Federal agency and we will certainly—I did not know of this particular program that you are talking about. We do have some mobile dental clinics that we use, and they are successful in the areas we use them. I did not know of these fully equipped units that you are talking about.

COMMISSIONER RUIZ. I would suggest, sir, that you probe into that because it's innovative, a new thing, and it is attractive to your budget people and apparently someone has interested them—I think the inquiry originally came from New England, and somebody in California got busy to try to fulfill that need. It might be a good idea to check into that.

DR. BOCK. I would predict that the problem of getting the equipment and getting the unit, we would still have the problem of getting the staff to operate it.

COMMISSIONER RUIZ. If you will submit a note to our counsel or secretary here to contact me, I will forward to you the name and the address of the people that are assembling this type of a unit and that might be a good start.

DR. BOCK. Thank you very much.

ACTING CHAIRMAN HORN. Commissioner Rankin?

COMMISSIONER RANKIN. Most of my questions have already been asked but I have one or two more.

Dr. Bock, I know your request for more money has been very graphic and very compelling. Do these men in Washington, like Dr. Buzzell, ever come down here to the reservation and to your hospital to see the crying need for money?

DR. BOCK. As I said, we were very fortunate in having Mr. Buzzell come out here and he spent 4 days with us and looked at our facilities, looked at the problem, and at that point he was very impressed.

COMMISSIONER RANKIN. That helped a whole lot, don't you think?

DR. BOCK. Very, very much, sir.

COMMISSIONER RANKIN. Is there anybody else in Washington to get down here to help you?

DR. BOCK. We'd like to get a lot of them out here.

COMMISSIONER RANKIN. We might start on a campaign in that direction and see if we can't get some results that way.

DR. BOCK. I think—you know, the Chinese have a saying, a picture is worth ten thousand words, and everyone we've ever had come out, Congressmen; and other people in HEW, once they've seen it, they've become advocates of the program. But, as you say, they have to come out to see it.

COMMISSIONER RANKIN. Now, I'm greatly impressed by the growth of your outpatient work. It's grown tremendously, hasn't it?

DR. BOCK. Yes, it's up to 500,000 outpatients a year.

COMMISSIONER RANKIN. Let's say I have so much money here you can use for outpatient work or for hospital work, one or the other, where would you place that money? Which is the most crying need now?

DR. BOCK. That's a very difficult question. We always have those emergencies which are medical and surgical emergencies which can't wait. So they're really the highest priority. Now, they could either be inpatient or outpatient emergencies, and in answer to your question, we feel that the emphasis, given the ability to perform in both areas, the emphasis should be on outpatient, to preclude inpatient activities.

COMMISSIONER RANKIN. I agree with you.

One last question. We have talked about the difficulty of securing the necessary staff. What about requiring the number of doctors? I know in North Carolina we have three medical schools, but in some of the rural counties we can't get a doctor to go to the rural county. Is it difficult to get doctors to come out on the reservation or does the Public Health Service send doctors out here? How is that done?

DR. BOCK. Up until July 1 of this year we were fortunate. The draft gave us the ability to give those physicians who came to work with us as far as their being eligible for the draft, they could take care of their draft obligation by coming to work with Indian Health Service. So we really never had a problem of having physicians for a 2-year period.

We did have a problem of having physicians who would stay longer than 2 years. The draft ended in July and we are fortunate this year in having an adequate number of physicians to fill the vacancies. This has been the result of our having a program where we let medical students come out here from various medical schools to spend 2 or 3 months on the reservation, and these men have been stimulated enough to come and fill those gaps.

Now, what the future holds is a moot question. We feel that, if we continue to stimulate medical students, we'll always have enough coming to work with us. However, no one really knows whether this is going to be true or not. This year we're all right. Next year it looks like we're going to be all right.

COMMISSIONER RANKIN. Well, your work has been very rewarding out here, has it not?

DR. BOCK. Yes, sir.

COMMISSIONER RANKIN. And you can tell others of that and maybe somebody else would follow you. I hope so.

Thank you very much.

ACTING CHAIRMAN HORN. Dr. Bock, I wonder, are there medical schools in Arizona, New Mexico, and Utah that are cooperating in placing their residents and interns with the Indian Health Service here?

DR. BOCK. There are four medical schools in the four corner States and we have the ability to have their students come into our mix. As far as residents, we have a few residents who come in to cover those positions. For example, New Mexico has at the present time an orthopedic resident who is on the orthopedic service at Gallup, and we have intermittently some residents that come in and work for us. We have a fellow resident from the University of Colorado on the ENT service, the ear, nose, and throat service, in Gallup.

We would like to have the ability—and you hit a very important question—we would like to have the ability to have the positions and the dollars to stimulate bringing these residents in because it's a two-way street then. They get stimulated. Our people have a chance to get outside type of stimulation and if we— We're trying to work out with the University of Arizona Medical School at the present time an exchange program where they will send one of their senior resident surgeons, say, up to Tuba City and we'll send a Tuba City surgeon down to the medical center in Tuscon so he gets stimulated and the other fellow gets stimulated, and cross-fertilization, but you need the dollars to do that.

ACTING CHAIRMAN HORN. As a university president I obviously think that's an excellent idea and I just hope that public institutions are cooperating as much as they can.

Dr. McKenzie?

DR. MCKENZIE. Mr. Chairman, if I may, I'd like to make a comment or two in that regard.

The Navajo Tribal Council in its wisdom has set up a branch activity which has come to be known as the Navajo health authority, whose responsibility it is to get people into the health professions, education of various types, and one of the primary responsibilities is the establishment of a medical school to train American Indian physicians, hopefully for them to return to their own lands to care for their own people. I recognize that it will not be a 100 percent program as far as the number returning to the reservation, but given the attrition rate, hopefully a few more Indian physicians to return to their people.

In order to prepare for the American Indian medical school, it is necessary that some kind of postgraduate training be established, and the Health Authority now is actively engaged in establishing a family practice residency program on the Navajo Reservation. And I mention this simply by way of indicating to the people who are in positions of authority that the Navajo health authority needs much support in proceeding toward the realization of these stated goals.

Thank you.

ACTING CHAIRMAN HORN. Thank you.

Let me ask one last question. Perhaps Dr. Bock can answer it. If a Navajo woman requests the advice of the Indian Health Service on family planning information, are there any restrictions one way or the other on the service to provide such advice and to what extent can they go beyond advice?

Dr. Bock. Family planning has been an operation on the reservation for the last 7 or 8 years, and every Navajo woman has the ability to come in for family planning counseling, and it was presented in a way that it was not to be a mechanism of reducing population but a mechanism which would mean healthier women, healthier mothers, healthier babies and lessen the infant mortality rate, and hopefully have stronger and healthier children.

Any woman can come in for these services. At the present time in the State of New Mexico she has the ability if she wants to have certain procedures done which would preclude having a child or becoming pregnant. These are hers to choose.

Acting Chairman Horn. But apparently not in the State of Arizona?

Dr. Bock. It's limited slightly in the State of Arizona.

Acting Chairman Horn. Why does Arizona law prevail on a Federal reservation in this area?

Dr. Bock. Well, the way that the Indian Health Service policy is written, the activities as far as abortions, other kinds of preventive services concerning pregnancy, are in accordance with the State law at the time.

Acting Chairman Horn. This is a directive, is it? From where?

Dr. Bock. From Indian Health Service headquarters.

Acting Chairman Horn. Indian Health Service. Is this a directive of the Secretary of Health, Education, and Welfare, to your knowledge?

Dr. Bock. It comes down as a directive from HEW to the operating agencies.

Acting Chairman Horn. But it is in writing somewhere?

Dr. Bock. Yes, sir.

Acting Chairman Horn. I would like that introduced as Exhibit 32 just for the record.

[The document referred to, to be marked as Exhibit No. 32 for identification, was received in evidence.]

Acting Chairman Horn. In this 7-year program, in your judgment, have you seen much change in the birth rate and improvement in the health, let's say, of those children that are born?

Dr. Bock. The birth rate continues to—it was increasing and then it leveled off, and now it is—the number of babies born is increasing, and we have pretty good evidence—that is not statistically backed up yet, but from clinical evidence—that the programs such as family planning and the other nutritional programs we have introduced are having an effect on the infant and the young child.

Acting Chairman Horn. Obviously, the reason I ask this is that you find the same problem in the so-called underdeveloped countries. And the Formosan branch of China was able to solve that so the population growth did not get ahead of economic development. But if you have two-and-a-half times the birth rate of the American population, generally, you have a real problem in developing the structure to provide a decent standard of living for all people when their people are going way beyond the limited resources that are made available.

DR. BOCK. There's no doubt that the economic level of a country or a nation, like the Navajo Nation, is directly related to the health of that nation, and that when we tell a mother and give her good instructions as to how to feed her child and how to prepare the formula and how to store the formula, when that mother goes home to a hogan where there is no electricity, no refrigeration, no running water and a possible contaminated water supply, it makes it very difficult because of the economic overtones to have the effect you could have with the health delivery system. So until the economic improvement takes place, the impact of the health system is going to be impaired.

ACTING CHAIRMAN HORN. And I take it, also, nutrition, from what we know, does have an effect on, say, a child's performance in school and learning situation in terms of the damage, physically, mentally.

DR. BOCK. That's right. We still see cases of marasmus and kwashiorkor on this reservation. And these are, you know, things we see in Africa or India. This should not be. In an effort to do something about this, we have instituted various feeding programs, infant formula programs, so that the mother has the ability to come in and get the formula and the kind of nutrition that the child needs. This has had an impact.

ACTING CHAIRMAN HORN. Thank you.

Mr. Glick, do you have any further questions?

MR. GLICK. Yes, Mr. Chairman, I do have one question.

Dr. Bock, can you give us some concept of how communities are selected on the reservation for the building of a clinic or another health facility? How do you make a decision as to where they should go?

DR. BOCK. Mr. Glick, prior to my coming, the decision had been made for those that were already built. So I won't take the kind of criticism that might be concerned in some of those.

Example. The Indian Health Service medical service in Gallup should have been built in the center of the reservation. It should not have been build in Gallup, New Mexico. There are other facilities which are not that vivid in what happened as far as their construction.

At the present time, what we do is look at what the population concentrations are, what the population predicted increase is going to be. We look at where the new schools are being built. We look at what new industrial input is coming in.

A good example, in Shiprock, where Dr. McKenzie is, we are in the throes of this now with the possibility of the new gasification plants coming in in that portion of the reservation and what impact these things will have on population explosion in those areas. And then, using those statistics by use of formula, come up with what the need is as far as inpatient and outpatient services.

And at the present time, we have a long list of new hospitals that are needed. We have a list of replacement hospitals that are needed. We have a list of new clinics and new health centers that are needed, based on this kind of an appraisal of the population growth and the usage patterns.

MR. GLICK. Is there any facility planned for the Pinon area?

DR. BOCK. Yes.

MR. GLICK. What will that be?

DR. BOCK. The health center is planned at Pinon—we would like to have it this present fiscal year. The chances are of it becoming a reality is probably 4 or 5 years away.

MR. GLICK. Thank you, Dr. Bock. No further questions.

ACTING CHAIRMAN HORN. Well, Dr. Bock and Mr. Conley and Dr. McKenzie, Ms. Smith, we certainly appreciate your coming here. You are obviously very dedicated public servants. I think we share your concern as to the failure of the country to face up to the very legitimate needs that you are all working so hard to achieve. And we do appreciate the time you have spent with us. Hopefully, together, we can all do some good and try to get a resolution of this problem. Thanks for coming.

MR. CONLEY. I would like to make a further comment.

ACTING CHAIRMAN HORN. Sure. Please.

MR. CONLEY. In carrying just a little further what Dr. Bock alluded to on the formula, and then to finish answering a question that Mr. Glick answered earlier, i.e., is the hospital large enough at Shiprock? The answer is no.

We are in conflict with the Bureau of Census. In 1970, they said the Shiprock service unit had a population of 22,000. This is one of the pieces of data that headquarters uses to determine the size of a facility that is built. The tribe did a census survey not only in the Shiprock service unit but reservation-wide, and there is a vast difference in the population figures.

We are, in Shiprock, with the three different censuses that were made, i.e., the tribe and some independent organization back in Illinois—Illinois, or Indiana—and the Navajo Community College, they say in the Shiprock service unit we have 28,000 to 32,000 population. The Bureau of Census says 22,000. So what we have had to do is to try to compromise. We did justify a 125-bed hospital in the Shiprock service unit.

In going back to what Dr. Bock said about the gasification complexes that is a probability going in between the Burnham and Bistali and north to the San Juan River, we have now, with the Shiprock health board, convinced headquarters that we need a 150-bed hospital, expandable to 200-plus.

So to answer your question, no, we do not have a large enough facility at this time. We are planning a 150-bed hospital. Headquarters tells us that there are $6.6 million available, which is not enough. We need eight-plus-point million dollars to build that facility.

Thank you.

MR. GLICK. Thank you, Mr. Conley.

ACTING CHAIRMAN HORN. My understanding, Mr. Conley, is that the Bureau of the Census bases their count on self-identification and that the Bureau of Indian Affairs bases it on tribal rolls.

But you are saying that, in order to justify a particular facility for a given population, HEW and perhaps all Federal agencies take the official Bureau of the Census account which we have seen appears to be an undercount, based on the actual number of individuals. I guess the population figures I have seen have ranged from 90,000 Navajos to 135,000 Navajos, depending on how you want to count them.

Is there anything being done by the Indian Health Service, HEW, to get a different change in formula? Or can you request a special census be done?

MR. CONLEY. The tribe, the Navajo Tribe, has asked for a recount, it's my understanding. And it is my understanding that the—and particularly, Indian Health [Service] does use the Bureau of Census figures as a guideline. So the Shiprock health board has challenged this figure, as well as the Navajo tribal health authority.

So there is some action in this area for a recount to see if we can close the difference between 22,000 and 28,000 to 32,000 in the Shiprock service unit, or 120,000 to 130,000, reservation-wide. Yes.

ACTING CHAIRMAN HORN. Very fine.

Exhibit 33 will be an exchange between the United States Commission on Civil Rights and the Bureau of the Census as to how they count Native Americans, American Indians, and also the Bureau of Indian Affairs, which counsel conferred on.

[The documents referred to, to be marked as Exhibit No. 33 for identification, were received in evidence.]

DR. BOCK. Mr. Horn, we just finished a document that I think you will be interested in, in substantiating the higher count, and showing that from our own statistics of births, our own statistics of family folders in the area, that the count was inaccurate. And it is not only pertinent to our health needs, but the Navajo Tribe itself suffers as a result of this insufficient count because of revenue sharing.

ACTING CHAIRMAN HORN. How long is that document, Dr. Bock?

DR. BOCK. Oh, it's a thin document.

ACTING CHAIRMAN HORN. Would you mind furnishing it for the record? It will become part of Exhibit 33.

[The document described, to be included as part of Exhibit No. 33, was received in evidence.]

DR. BOCK. Fine. Thank you.

ACTING CHAIRMAN HORN. Thank you again, gentlemen. We appreciate it.

Will Mr. Myron Jones please come forward.

[Mr. Myron Jones was sworn and testified as follows.]

TESTIMONY OF MR. MYRON JONES, DIRECTOR, INDIAN EDUCATION TRAINING

ACTING CHAIRMAN HORN. Please be seated.

Mr. Glick.

MR. GLICK. Thank you, sir.

Mr. Jones, for the record, will you please state your name, your address, and your occupation.

MR. JONES. My name is Myron Jones, I live at 1310 Marquette Place, Northeast, Albuquerque, New Mexico. I am the director of an organization called Indian Education Training which trains Indian advisory school board members and monitors Federal funds going into public schools for Indian education.

MR. GLICK. You say it trains Indian board of education members?

MR. JONES. They may be either the school board members or advisory committee members, Johnson-O'Malley committee—Title I Indian education committee members.

MR. GLICK. Can you give us some of the content of the training that is given to the people?

MR. JONES. Yes. We have, generally, always begun with an outline of how a school district puts its budget together. One of the great myths of public school education for Indians has been that somehow, somehow, Indian students, or the presence of Indian land, creates a burden for a school district and for taxpayers. In fact, the opposite is true. There is no school district within either New Mexico or Arizona where the district does not make more from Public Law 874 supporting Indian students than from comparable local taxes.

So we begin demonstrating to parents, through statistics, through pie charts, with translations, in districts, that not only is the school not doing them a favor and giving them a free ride, but, in fact, the presence of Indian land and the numbers of Indian students are essential to the financial functioning of their school district.

MR. GLICK. Can you give us some little description of the various kinds of Federal funds that go into the education of Indian children?

MR. JONES. Okay, Sure. I would like to start out with Johnson-O'Malley funds, passed in 1934.

Johnson-O'Malley funds were originally meant to apply to the States on the West Coast where the Bureau of Indian Affairs was unable to provide educational services. And so it was physically necessary for students to attend public school for the first time.

Even before 1934, before there was a formal act, the Bureau would step in, and when Indian students went to public schools rather than Bureau schools, the Bureau would pay a flat tuition rate for all Indian students. But this was always done through the Bureau and individual districts.

The Johnson-O'Malley Act of 1934 made it possible for the Bureau to contract directly with States and to arrange for the education of any or all Indian students through public schools. It was originally intended to apply not to large reservation areas, like the Southwest, but to areas like the West Coast where there were small reservations split up within non-Indian communities.

In 1958 Public Law 874, impact aid, was meant to apply to Indian land also. And so, for the first time, public school students had the potential of being doubly compensated for the presence of Indian students. The Bureau of Indian Affairs acknowledged this in their regulations by saying that where a school district received Public Law 874, Johnson-O'Malley funds will be restricted to special and extraordinary education needs. The problem has been that this has not been enforced in any way. And I will deal with that later, if you wish.

After that, in 1965, Title I of ESEA [Elementary and Secondary Education Act], of course, applied to Indian students as it applied to all other students who were labeled as educationally disadvantaged.

In 1972 the Indian Education Act was passed to also provide special supplementary program funds for schools. That money was impounded. It was released by a court order on May 8, 1973. All applications had to be in by June 10 of 1973. That was formula funding, and the rush between the impoundment and the actual review of programs created a situation where everyone who didn't describe how they would cheat got funded.

[Laughter.]

And that was almost everyone. A few people actually described how they would misuse the funds and they lost out. But everyone else got it.

MR. GLICK. One other question I have, Mr. Jones, is that one of the aspects of the problem that makes it important for Indian school board members to have some education in school boarding, so to speak, is the variety of organizations that are responsible for Indian education, such as BIA, State boards of education, local boards of education. Could you say a few words about how that makes it complicated for an understanding of what responsibilities are?

MR. JONES. Yes. I would say that, generally, all these Federal programs—and some districts may have as many as five or six separate Federal programs for Indian education—that these programs tend to operate within their own vacuum. That's one difficulty.

Another difficulty is that with Johnson-O'Malley funds, which have been the most substantial funding for Navajos, the decision on how the money would be used has been primarily handled not by the Bureau of Indian Affairs but by the States. And within the Navajo nation, it was very dramatic.

The State of New Mexico has a State plan for the funds that says all funds will be supplementary. School districts will meet all basic minimum standards before they use Johnson-O'Malley funds. And these will be for special and supplementary needs. All districts in New Mexico with Navajo students do receive Johnson-O'Malley funds. And though the regulations talk about tax effort, a New Mexico district that has had the lowest tax effort in the State for the last 5 years and a surplus that, this year, came to $2.4 million in cash on June 30, has nevertheless received funding with Bureau approval.

The State of Arizona: the State plan was written by the State department of education and is based only on the financial needs of school districts as declared by the school districts. The money is divided between major and minor impact districts. And last year, which was the last full accounting of $3.8 million given in Johnson-O'Malley, $10,000 was used for special programs. The rest went into the basic school budget, which would suggest somehow that Arizona districts are poorer than New Mexico districts.

We did a statistical breakdown, which I have given you here, which shows that Arizona districts, without exception, have more money per pupil for comparable sized districts before Johnson-O'Malley than New Mexico districts do after they get Johnson-O'Malley. So that in spite of the fact that they are, by any comparison, wealthier, there is no requirement for supplementary programs in special Indian needs.

There also is no—the Window Rock area office, to the best of my knowledge, has never assigned even one individual to look into public school education. So that on Johnson-O'Malley alone, they have approximately $8 million in Johnson-O'Malley funds coming through for public school education for Navajo students with no one minding the store in any way.

There have been employees within the area office who have been very interested in the question and have been assigned sometimes for 10 to 12 days at a time. But even they operate within the fragmentation and they look briefly, skimmingly at Johnson-O'Malley funds, but have no idea of what Public Law 874 funds are or what Title I funds are or what Indian education funds are. And so there is no effective monitoring because there is no effective central office that looks at all of the Federal money going into any one school district.

MR. GLICK. Thank you, Mr. Jones. I don't have any further questions at this time, Mr. Chairman.

ACTING CHAIRMAN HORN. Counsel, there are a series of exhibits, I think, that ought to be introduced into the record at this point, am I correct, that Mr. Jones has?

MR. JONES. Yes, sir.

ACTING CHAIRMAN HORN. How shall we entitle those—distribution of Johnson-O'Malley funds and the basis for distribution relating to the Navajo Reservation?

MR. JONES. Yes. The first, I would say, three-quarters of it has to do with contrast between Arizona and New Mexico and contrast between the State plans. This is to demonstrate that these determinations are made not by the Bureau, which originally has the money, but by the States which want the money. The second part of it is a question of school lunch and breakfast programs.

ACTING CHAIRMAN HORN. All right.

MR. JONES. In this case, Arizona operates far more school breakfast programs than New Mexico for Navajo students.

ACTING CHAIRMAN HORN. The material furnished by Mr. Jones relating to those programs will be introduced as Exhibit 34.

[The documents referred to were marked as Exhibit No. 34 for identification and received in evidence.]

ACTING CHAIRMAN HORN. Mr. Freeman.

COMMISSIONER FREEMAN. Dr. Jones, you referred to the absence of any monitoring program and, therefore, the abuse of the program by the various respective States. I would like to ask if you have any suggestions or recommendations as to what needs to be done to eliminate these abuses; whether the agency responsible for funding the program has the duty as you understand it, or whether additional legislation is necessary.

MR. JONES. I, myself, don't think additional legislation is necessary. I think that it simply is a problem of administration. I think that, in this case, in the case of the Navajo Nation in terms of Federal agencies, that the logical place to oversee all Federal funds for public school education, is through the Bureau of Indian Affairs.

I personally believe that, ultimately, all of that ought to be contracted to the Navajo Nation. But that's—I'm not a Navajo. That clearly is not my business. But I think that until that—until such a day happens, that the Bureau of Indian Affairs on an area office level simply has to be on top of the situation.

As I said, the lowest—the district in New Mexico with a ridiculous surplus for the last 5 years has simply refused to budget its money while receiving Johnson-O'Malley funds and has had the lowest tax levy in the State.

In Arizona, three districts receive no Johnson-O'Malley funds because they don't meet the State tax average for Johnson-O'Malley districts.

So, on the one hand, the same Bureau office says, "Well, they may have the lowest tax levy, but we think maybe they are trying."

We say, "They demonstrably are not trying."

They say, "Well, maybe they want to try."

And, yet, in another State, districts that don't meet an average tax levy are simply cut out of all funding in the same program. It makes no sense at all. I think the Bureau needs an education, themselves. I don't think the area office, the area education office here, knows anything about Federal funding, which would be all right if they were willing to admit that. After they admit it and after they themselves learn something about Federal funding, I think they have to monitor all Federal funding within every school district.

COMMISSIONER FREEMAN. You are saying that the Bureau of Indian Affairs has the responsibility, but they have not been doing this, that even if they probably were interested, that they do not—they are not capable? Are you saying that they do not have the capability for doing it?

MR. JONES. I think they—I don't know whether or not they have individuals who are capable. I know that the responsibility for looking into Federal funds for public education has never been delegated within the area office. The main task of an area office seems to be maintenance of the BIA school system, and that in spite of the tremendous amount of school Federal funding, that has had a very, very low priority.

COMMISSIONER FREEMAN. So that perhaps this Commission ought to inquire of the Bureau of Indian Affairs as to what, if anything, they propose to do to improve the situation in the future, is that what you suggest?

MR. JONES. Yes, I would suggest that. I would suggest, also, that the same thing has happened on a national level.

A year ago when the Indian Education Act was passed, the Office of Management and Budget requested the Bureau of Indian Affairs to create new regulations for Johnson-O'Malley that would dovetail with pending regulations for the Indian Education Act.

Now, 1 year later, the regulations for the Indian Education Act have been written, published, and are in effect, and the proposed changes in Bureau regulations are still in the talking stage.

There is no coordination at all between the Bureau of Indian Affairs and the Office of Education, though more initiative in that direction, at least on a Washington level, has been undertaken by OE than by the Bureau.

COMMISSIONER FREEMAN. Thank you.

ACTING CHAIRMAN HORN. Commissioner Ruiz.

COMMISSIONER RUIZ. Would not a tribal resolution, predicated on a series of whereases, based upon your knowledge and research that you have done concerning the overlapping, bureaucratic overlapping, constitute a good start at this time to get the ball rolling a little bit faster?

MR. JONES. I think that a tribal resolution would help a great deal. I don't think that either the council or the chairman's office has been remiss in passing resolutions or in urging educational reform. I think the problem has been that the area office has never been geared up to do the task.

COMMISSIONER RUIZ. Now, which area office?

MR. JONES. The Window Rock area office. That is, there are—there's— I guess what I am saying is that there's great confusion on the national level, but there are some area offices that have a much smaller responsibility for Bureau school education that have delegated staff members to monitor, oversee, and develop programs and training programs for Federal funds in public schools. There are area offices with one-quarter the funds that exist in this area that have delegated staffs of up to five people. This area office, again, has never delegated anyone to look into that.

COMMISSIONER RUIZ. Now, if I have understood correctly, you stated that you do not feel that legislation is necessary.

MR. JONES. No, sir, I don't.

COMMISSIONER RUIZ. You have made the suggestion that the Bureau of Indian Affairs contract this out to the Navajo Nation, I believe.

MR. JONES. Yes, sir.

COMMISSIONER RUIZ. As one solution.

MR. JONES. For all Federal education funds.

COMMISSIONER RUIZ. Yes. In order to get everything into a centrally located responsible entity.

MR. JONES. Yes, sir.

COMMISSIONER RUIZ. Concerning the suggestion that you have made, has there been a resolution within that context passed for purposes of getting the ball rolling a little bit faster?

MR. JONES. I don't know. I know that the issue was badly obscured this June.

At one point, 2 years ago, the State of New Mexico actually undertook serious reform on Johnson-O'Malley. They developed new budget forms. They developed fiscal accountability for the first time. They took some—they had then and they have now the best budget forms in the country. They lay out all supplementary programs. And you can look at them and see how a district is using its money.

However, the State of New Mexico was being sued, along with the Kirtland Central School District. The State was advised by its attorneys that the best way to handle the lawsuit would be to drop the Johnson-O'Malley contract and let the Navajos take it. Overnight, Indian self-determination became the watchword in Sante Fe, New Mexico, and the tribe was suddenly being urged much too quickly to take it. And I think the tribe was understandably very suspicious of this sudden generosity.

In an article in the Gallup—according to an article in the Gallup paper, the Bureau of Indian Affairs' contract office said that it could not give the contract to the Navajo Tribe because the Navajo Tribe was not a political entity. This is something that was brand new to the Navajo Tribe which had undertaken, of course, all manner of contracts and is considered a legal entity everywhere else.

ACTING CHAIRMAN HORN. Excuse me. That was the Bureau of Indian Affairs—

MR. JONES. Right.

ACTING CHAIRMAN HORN.—contract office located where?

MR. JONES. In Gallup.

ACTING CHAIRMAN HORN. In Gallup.

MR. JONES. Took the position in June, in July, rather, that no contract could be given to the Navajo Tribe because it was not a legal entity.

ACTING CHAIRMAN HORN. Is that a written decision?

MR. JONES. I don't know.

ACTING CHAIRMAN HORN. Let me ask our counsel to see if we can get the relevant documents by subpoena or otherwise on that decision.

MR. GLICK. We will do that.

ACTING CHAIRMAN HORN. It will be Exhibit No. 35.

[The documents referred to, to be marked as Exhibit No. 35 for identification, were received in evidence.]

MR. GLICK. Will do.

MR. JONES. I think it was an informal position from the Interior Solicitor where the style is usually not written but called from one room to another, "Hey, Joe, what do you think?" And Joe says—

ACTING CHAIRMAN HORN. Joe says, "Don't give it to them again this year."

MR. JONES. Yes, right.

COMMISSIONER RUIZ. Does much of this informality, in your research, go on much with relation to unrecorded matters and just speaking from one room to another? I was just curious to know because you mentioned the words, "there was an informal conclusion reached."

MR. JONES. Yes. A great deal of informal conclusions come on. We were working on a teacher's aide training program, and we were assaulted with four fictitious solicitors' opinions in one week, none of which turned out to be real at all but—

COMMISSIONER RUIZ. Have you found it difficult to get concrete decisions, or do you always get informal conclusions and informal suggestions?

MR. JONES. I have found it almost impossible. I am quoting myself. A few weeks ago in Albuquerque, I— In terms of education and who is responsible, the Bureau of Indian Affairs frequently resembles the Congolese Army in that the officers request the enlisted men to take some action, and if the enlisted men don't feel like doing it, that ends the question because the officers only have little whips and the enlisted men have big guns.

We have found that on education issues on an area level, that the area says, "that's all being decided in Washington," and that Washington, in fact, has no authority whatsoever in relation to education. As an organization, our experience has been that all administrative decisions are made on an area level, that nothing at all happens in Washington.

ACTING CHAIRMAN HORN. There are a number of people that have been saying that for years.

MR. JONES. Yes. The last few days indicate otherwise. Something is happening.

COMMISSIONER RUIZ. I have no further questions.

ACTING CHAIRMAN HORN. Very good.

Let me ask you. You are an expert on public school acts, Federal acts as they pertain to the public education of American Indians.

Do you recall an act—if memory serves me right passed around 1955 through the two Interior committees of both Houses—that had to do with the subsidization of Indian high school graudates, provided they pursued a vocational education the first year in a college, or a vocational technical school? It sort of came up about the time of the termination philosophy when they felt there was a need for skilled manpower in the Indian population in order to achieve termination. Have you ever looked at that act at all?

MR. JONES. No, I don't recall the act. I know the Johnson-O'Malley has been in and is now being used that way. That is, in many, many districts, Johnson-O'Malley is used not to correct educational problems but to obscure them on a high school level.

ACTING CHAIRMAN HORN. You see, my concern is that, apparently, we have on the books—and I am sorry I did not bring the act with me. I looked at it a year ago, and I think it was passed around 1955, and I will be glad to furnish it as Exhibit 36.

[The document referred to, to be marked as Exhibit No. 36 for identification, was received in evidence.]

ACTING CHAIRMAN HORN. But we have on the books, if memory serves me right, an act that subsidizes the graduate of an Indian high school who pursues a technical education but does not subsidize the graduate of an Indian high school who pursues a liberal arts education, let's say, or a scientific education. And this concerns me as a matter of national policy, and I, personally, think the act ought to be amended. And I just wondered if you are familiar with it.

MR. JONES. No. I am not.

ACTING CHAIRMAN HORN. Okay.

MR. JONES. That doesn't surprise me.

ACTING CHAIRMAN HORN. We will put that in the record for a followup later then.

Mr. Buggs.

MR. BUGGS. No further questions.

ACTING CHAIRMAN HORN. Any further questions, Mr. Glick?

MR. GLICK. No, I do not have any.

ACTING CHAIRMAN HORN. Thank you very much, Mr. Jones. We appreciate you joining with us.

The next panel is the beginning of the exploration of public schools off the reservation, a panel from the Gallup-McKinley community school panel, New Mexico. Marlene Hoskie, Robert Livingston, Shirley Martin, would you please come forward.

[Ms. Marlene Hoskie, Mr. Robert Livingston, and Ms. Shirley Martin were sworn and testified as follows.]

TESTIMONY OF MS. MARLENE HOSKIE AND MR. ROBERT LIVINGSTON, STUDENTS, GALLUP HIGH SCHOOL, NEW MEXICO; AND MS. SHIRLEY MARTIN, STUDENT, NAVAJO COMMUNITY COLLEGE

ACTING CHAIRMAN HORN. Please be seated.

Mr. Glick.

MR. GLICK. Thank you.

Would each of you please state your name and address and the school you attend for the record, please beginning with Miss Hoskie.

MS. HOSKIE. Okay. My name is Marlene Hoskie and I go to Gallup High School and I am a senior there, and my address is Post Office Box 113, Gallup, New Mexico.

MR. GLICK. Robert.

MR. LIVINGSTON. My name is Robert Livingston. I come from Pinedale, New Mexico. I also attend Gallup High. I am a senior. And my address is Drawer B, Gallup, New Mexico.

MR. GLICK. Miss Martin.

MS. MARTIN. Shirley Martin, and I am a graduate of Tohatchi High School, and I am now attending Navajo Community College at Tsaile, Navajo nation.

MR. GLICK. I would like to begin with a few questions for Miss Hoskie. Are there now any bilingual-bicultural courses in Navajo at Gallup High School?

MS. HOSKIE. Well, there isn't really a total bilingual education class, but there is a Navajo language class.

Mr. Glick. There is a Navajo language class?

Ms. Hoskie. Yes.

Mr. Glick. Do most of the students want to have some bilingual-bicultural education?

Ms. Hoskie. Yes.

Mr. Glick. Has anything been done to bring this to the attention of the board of education?

Ms. Hoskie. No. Not by the students, but we have done some work by going around to the different chapters and we found that most of the parents are in favor of bilingual education.

Mr. Glick. And are they taking any steps to urge the board of education to institute something?

Ms. Hoskie. Yes. They have passed resolutions from the different chapters.

Mr. Glick. Now, can you tell me what kind of books are used, textbooks are used in Gallup High School that have references to American Indians? What kind of books are they, and do you think they are appropriate books?

Ms. Hoskie. No. The textbooks that are being used in history courses are—they don't give the American Indians' side of the story, like they just give the big account of how, like Columbus discovered America and on down.

Mr. Glick. They give a biased picture of the American Indian life?

Ms. Hoskie. Yes.

Mr. Glick. Thank you.

Mr. Glick. Now, Mr. Livingston, are there Navajo teachers at Gallup High School?

Mr. Livingston. Could you excuse me? Could Dr. Billison please interpret for us? There is some Navajo parents out there sitting, and I feel that they should understand what's going on.

Acting Chairman Horn. Fine. Dr. Billison, would you mind doing that?

Mr. Glick. I will state the question again, Dr. Billison.

Are there Navajo teachers at Gallup High School?

Dr. Billison. About the previous statement, shall I go ahead and interpret her statement?

Mr. Glick. Yes. Why don't you, please.

Ms. Hoskie. Yes, please.

[Translation into Navajo.]

Mr. Glick. Now, can you answer that question, please. Are you going to answer in Navajo, Robert, and then Dr. Billison will translate it into English for the record.

[Translation into Navajo.]

Mr. Livingston [translation from Navajo]. The answer is, there's one Navajo teacher. There is also from a different tribe, an Indian teacher, but they both teach in English.

Mr. Glick. What opinion and what kind of relationship is there between the Navajo students and the non-Navajo teachers at Gallup High School?

[Translation into Navajo.]

MR. LIVINGSTON [translation from Navajo]. The relationship between the non-Navajo teacher and Navajo students is commendable, but there are some Navajos that do not fully understand the English context of the lessons and, thereby, do not learn everything that is taught. And this is probably the reason that I feel that there should be bilingual education.

MR. GLICK. Do Navajo parents, or parents of Navajo students, visit at all and have much relationship with the Gallup High School? And if not, why does Mr. Livingston think not?

[Translation into Navajo.]

MR. LIVINGSTON [translation from Navajo]. The public school does attempt to get the parents involved by sending notes with the students. However, these notes are in English and no one interprets them and the parents feel that, since there are no interpreters at the school, the visit to the school would be useless, and perhaps each school should have an interpreter for these parents.

MR. GLICK. Question for Shirley Martin now, Dr. Billison.

In 1973 Navajo students at Tohatchi High requested help from the local chapters to resolve problems between the students and the school. What were the major complaints of the students?

[Translation into Navajo.]

MS. MARTIN [translation from Navajo]. Well, there were a lot of problems and there was discrimination exercised every day that I went to school, and we had a meeting where a group of concerned students got together to try to better the school for future generations. And some of the problems were the vice principal's attitude toward students and the suspensions. There were a lot of students that were getting suspended.

And why wasn't there an Indian Club? And we were told the reason why we couldn't have an Indian Club, the reason was that we didn't have a sponsor. And the assistant counselor was willing to sponsor us, and he told us, himself, that he was willing to sponsor us. But then the principal just gave us a lot of hassle.

And the teachers' attitudes towards students. And, last year, in one of my classes, the class wasn't paying that much attention, and the teacher said that if we continued to act in that way, that we would never get past Navajo Inn.

And these kinds of things were said to students, which discourages them to go to school. And that's one of the reasons why we have a dropout problem.

And the other problems were that there was no student handbook at Tohatchi. And there was an absentee policy called a series system that was used in the school which hurts the students very much. And they were receiving grades which they didn't make in the classes.

And personal grudges held by the principal and vice principal. Some of the students didn't really explain—I mean some of the teachers didn't really fully explain to the students what their assignment was, and this is another reason why the students aren't that well informed of what they are to do. And for that reason, they don't have any interest.

I forgot this part. One girl went into the office to get a tardy slip, and she was told by the vice principal that, "What do you want, you dog?"

That's all.

MR. GLICK. What did the students do about these problems? Did they take any action?

[Translation into Navajo.]

MS. MARTIN [translation from Navajo]. Yes. We did take action. We drew up a petition, and we went to the different chapter houses within the community—Coyote Canyon, Mexican Springs, and Tohatchi—and we presented this petition and our grievances to the communities, the chapter people.

MR. GLICK. Have any changes come about as a result of that?

MS. MARTIN. Well, I haven't been to the school, but I heard from teachers that there has been some change. But as far as, you know, students telling me there have been changes, I haven't heard too much.

And if you don't mind, I'd like to say more and more things.

MR. GLICK. Well, we are running out of time, Shirley, but go ahead for some little time.

MS. MARTIN. Well, during our hassle with the administration, there was a lot of things that we feel weren't right. While we were doing this, we were labeled, i.e., AIM [American Indian Movement]. Our names were given to the FBI. We were watched constantly by the administration and teachers. There were three teachers constantly watching me between classes by my locker, and each time we would assemble, these teachers would come by and say, "Go to class. Go to class."

And doors were locked. While we were in classes, the doors were locked. And one of the reasons why, you know, I think the doors were locked was they had the feeling that AIM was going to come in and take over the school.

And students who were, you know, working with us, who worked in the office as office aides and some worked in the libraries, these students were put into other classes without their consent. And they thought the reason for this was they thought the administration thought of them as spies for our group. And the teachers who supported us were threatened with their jobs.

And I took a speech course, and in this speech course, I was told that I couldn't read anything racially violent.

And our records, I was told, were taken out of the school. I don't know where our records were taken. And students were threatened by the administration. Their diplomas were threatened, and I was told my future was in jeopardy because I was doing this. And another student was told, everywhere she went in her future, if she tried to get a job somewhere, there wouldn't be a job available for her because of what she was doing.

And there were students who qualified for National Honor Society and were qualified for student of the month, and these students weren't recognized. And some students were put on the National Honor Society, but they weren't legally initiated.

And students—there was just one girl who wore an army jacket that had "red power" on it for 2 years, and during this time we were having the hassle with the administration, she was told not to wear that jacket no longer.

And on the day of Larry Wayne Casuse's funeral, we had a walkout, and as we were marching around the circle in front of our school, a deputy who was working for Red Rock bus school system—he works for the bus—anyway, he took out a loaded gun, and this was witnessed by some of the students. But I myself did not see it.

MR. GLICK. I have no further questions, Mr. Chairman.

ACTING CHAIRMAN HORN. Any questions?

COMMISSIONER RUIZ. I have just one.

ACTING CHAIRMAN HORN. Yes.

COMMISSIONER RUIZ. The Commission has recommended a training program for teachers, how to be sensitive to the education requirements of students who desire to retain their native tongue. And based upon those facts, which you have so eloquently described, similar recommendations are in order.

Thank you.

ACTING CHAIRMAN HORN. Thank you very much for joining with us. We appreciate it.

The next panel will be the Gallup-McKinley County community panel. Will Donna Parra, Christine Ashley, and Harry Yazzie please come forward.

[Mrs. Christine Ashley, Mrs. Donna Parra, and Mr. Harry Yazzie were sworn and testified as follows.]

TESTIMONY OF MRS. CHRISTINE ASHLEY, MEMBER, PARENTS COMMITTEE, GALLUP PUBLIC SCHOOLS; MRS. DONNA PARRA, TEACHER, GALLUP HIGH SCHOOL; AND MR. HARRY YAZZIE, MEMBER, INVESTIGATORY COMMITTEE ON TOHATCHI HIGH SCHOOL

MR. GLICK. Should I proceed, Mr. Chairman?

ACTING CHAIRMAN HORN. That is correct. Please proceed.

MR. GLICK. Will you each please state your name, your address, and your occupation for the record, please, beginning with Mr. Yazzie.

MR. YAZZIE. My name is Harry Yazzie. I am the dormitory manager for BIA boarding school. I think my reason for being here is that I did take investigations at the Tohatchi High School.

MR. GLICK. Mrs. Parra.

MRS. PARRA. My name is Donna Parra. I am a teacher in the Gallup-McKinley schools at Gallup High School, and my address is 115 Linda Vista Road in Gallup.

MR. GLICK. Mrs. Ashley.

MRS. ASHLEY. My name is Christine Ashley. My address is Box 1443, Gallup, New Mexico. My occupation is community health representative from Iyanbito Chapter, east of Gallup. And I am a member of the Parents Education—Indian Education Act, Parents Committee of Gallup Public School.

MR. GLICK. I would like to begin my questions with Mrs. Parra. The students that just told us about Gallup High School indicated there was only one Navajo teacher and one other Indian teacher of a different tribe. As a teacher there yourself, do you see any need or useful purpose to be served by having additional Navajo teachers?

MRS. PARRA. Yes, I do. Obviously, when you are working with young people and they look up to their teachers as models, it is very important that we have Indian and, specifically in this area, more Navajo teachers that they can look up to with a positive view of—it is disturbing that there aren't more.

I know that the tribe, my tribe, has made a commitment to training more. But we need to get young people back working with the children still in the public schools because, like in my building, most of the Indian personnel are in the kitchen and custodial jobs.

MR. GLICK. When you say your tribe, Mrs. Parra, you are yourself a Navajo?

MRS. PARRA. Yes.

MR. GLICK. Do the non-Indian teachers at Gallup High School receive a thorough orientation into the cultural ways of the Navajo when they arrive, beginning teachers?

MRS. PARRA. Well, I think I might answer that in terms of the school system as a larger unit.

I personally do not feel that our orientation program for new teachers, who come to Gallup-McKinley County schools, is adequate. And I base this on my many observations, teaching and working with people who have come from other areas, who are not necessarily insincere. However, they do not know enough, I feel, about the culture of our Indian and also our Chicano youngsters that we work with so that they can, maybe, do a better job.

MR. GLICK. Are there any Navajo counselors at Gallup High School?

MRS. PARRA. No, there are not.

MR. GLICK. Do you think that the curriculum at Gallup High School has some cultural relevance to the Navajo students?

MRS. PARRA. I do believe that we are finally at the stage where things are being developed that are more relevant for the students. In my own department, we are developing Indian studies programs and social studies. There is a committee being formed at large in the whole school system, as a total, that is trying to revise its approach and trying to make the program more cultural and relevant.

MR. GLICK. Are standardized tests in English given to Navajo children?

MRS. PARRA. Yes, they are, much to my dismay.

MR. GLICK. Why do you say to your dismay?

MRS. PARRA. Because—I wonder if I could use a reference that I have here. Would you object?

MR. GLICK. No, not at all.

MRS. PARRA. This, I am going to take this from a book called *Education Across Cultures*, written by a very respected professor at the University of New Mexico, Miles Zintz, who has spent a large portion of his life in Indian education. And he says that the average English-speaking child enters public school with a listening vocabulary of 8,000 to 10,000 English words, and a speaking vocabulary of 5,000 to 7,000 words.

Obviously, if a child comes to school speaking Navajo only—and this is still the case in many, many instances and is very desirable—he is placed at a magnified disadvantage when he has to compete with students who are already speaking English and have heard it in their homes. And so, thus, when the standardized tests are given—I have some copies of some here—it just seems totally unfair and quite frustrating for the child to have to take them.

MR. GLICK. Mrs. Parra, would you give the title—

ACTING CHAIRMAN HORN. Would you mind, Mrs. Parra, furnishing that material for the record?

MRS. PARRA. Certainly.

ACTING CHAIRMAN HORN. We will Xerox it and insert the appropriate portions as the next exhibit.

MRS. PARRA. I might add that our school board has gone on record against the use of these. However, it was about 2 weeks ago that I know that my own little daughter took another one these tests.

[The document referred to was marked as Exhibit No. 37 for identification and received in evidence.]

MR. GLICK. Mrs. Ashley, as a community health representative, with the Indian Health Service, you visit many Navajo parents. And in your conversations with them, do you find that very many of them have visited the McKinley County schools in which their children are enrolled or that they attend board meetings of the board of education of Gallup-McKinley County.

MRS. ASHLEY. No. They never attend any kind of meetings. Just very few of them do when I go visiting the parents in the community, like when this Title IV came out, the fund—and it was on the air that all the parents and teachers and Indian students to come. But only very few of them show up.

In fact, from my community, I was the only one that showed up in the whole—of about 1,000 people there, and I know there's about 90 percent of the parents there that the children are going to school in the public school in Gallup, and just myself showed up.

So I think we should have an orientation for the Navajo parents and teachers.

MR. GLICK. Why do you think the parents do not go to board meetings?

MRS. ASHLEY. I think they really don't feel they are important to them, but which is real important.

MR. GLICK. Do you think that the Gallup-McKinley County schools—you yourself as a parent and a person interested in the school system—do you think that the Gallup-McKinley County schools should have some bicultural-bilingual education and should teach the history and culture of the Navajo?

MRS. ASHLEY. What was that?

MR. GLICK. I say, do you think that the Gallup-McKinley County schools should have bilingual and bicultural education and teach the history and culture of the Navajos?

MRS. ASHLEY. I think they should have bicultural and bilingual in McKinley County school. I know this is what the children want, and this is what we want.

As a parent, myself, I want my children to learn, which I really don't have much time to teach them at home, and I really should. I really think they should have this bicultural and bilingual teaching in public school.

MR. GLICK. Mr. Yazzie, you are a member of the Tohatchi community. Were you involved in the committee that investigated the Tohatchi High School after the students had their demonstration?

MR. YAZZIE. Yes, sir, I was.

MR. GLICK. And can you tell us what the results of that investigation were?

MR. YAZZIE. Yes, sir. Thank you.

There are the ten items, findings and recommendations. We have at the request of Tohatchi High School students, parents, elected five community officials and committee official with the concurrence of Gallup-McKinley County school board.

The following are the findings and recommendations respectively on student complaints in Tohatchi High School. Some of the complaints were true and some were based on the conflict in testimony or insufficient evidence. However, our findings and recommendations were made as correctly as possible, with as much emphasis on—as possible on impartiality with all concerned.

Item one: Our finding and recommendation are as follows: Seven students were relieved from office job by administrator for their participation in free expressions. Recommendations: These are the staff people that did the investigations on these particular community—particular school, rather. Students should not be relieved of their office duty or transferred to another class in the middle of the semester unless three steps are followed: parents or students are informed; it must be to the educational benefit of the students; and the student must be disrupting the class or school.

Two: There are no handbook reference to school policy with which the principal and vice principal can use to effectively and constructively communicate with the students and the parents. Recommendations: Handbook containing Tohatchi High School rules and regulations should be published and made available to students and parents with the approval of the Gallup-McKinley County school board, with involvement of PTA and the student council.

Number three: The request of the Indian Club by students was ignored by the administrator. Recommendations: Recommended that the student Indian Club be formed with the consultations of high school administrator, five chapter officials and the student council.

Four: Lack of effective communication between parents, students, and administrator, student council and student body. Recommendation: Frequent meeting involving PTA, students in school, and official on responsibility of each concerned. Students' council with the constitutions be in style so as to act effectively on behalf of the entire student body; that they meet on days not in conflict with other school activities.

Number five. Finding: Unacceptable series system. This was mentioned before you people. The recommendations: A new series system be devised in which grading penalties would not be imposed.

Number six: Inconsistency, application of suspension system by the administrator. Recommendations: Recommended that the Gallup-McKinley County school board develop guideline regarding suspension policy with a chart of the offenses and penalties.

Findings—That's number seven: Varsity basketball coach. Poor judgments. Students' basketball team, manager, hitchhike home from Kirtland basketball tournament. Failure on the part of the coach to notify all the law enforcement agency when it is first found that the boy is missing. Unbecoming conduct—

MR. GLICK. Mr. Yazzie, I think I would appreciate it if you would skip that particular recommendation. And would you just give us, I think, nine and ten.

ACTING CHAIRMAN HORN. We have a problem on defame and degrade under the law, so we cannot mention any particular individuals or testimony that relates to particular individuals. So would you skip to the next recommendation.

MR. YAZZIE. To what recommendation?

ACTING CHAIRMAN HORN. The numbers nine and ten.

MR. YAZZIE. Number nine and ten. The recommendations. First is the finding. The local chapter official should be notified first if time permits on students' disturbance before calling the police force onto the campus by school official. The Gallup-McKinley County school board stated position again.

Findings are listed and recommendation are present for the—each finding. The picture is clear and the lack of the professional administrator is indeed obvious at Tohatchi High School. Lack of manual to conduct the administrative school. There is a great disregard and no consideration given and the recognition of the government of the community people. We therefore recommend that the contract of the principal and vice principal not be renewed, that a new administration be given a chance to give a new start.

MR. GLICK. I have no further questions, Mr. Chairman.

ACTING CHAIRMAN HORN. Any questions from our colleagues?

COMMISSIONER RUIZ. Yes, I will refer this question to Donna Parra.

MRS. PARRA. I don't hear that pronounced right very often.

COMMISSIONER RUIZ. World War I. The unique value of native Indian language was discovered in the field of communications by the great American public when it meant the precious blood of its sons and daughters. Has this ever been taught by the Anglo-oriented curriculum as a value which perhaps could never be repaid in dollars and cents?

MRS. PARRA. You are speaking not specifically of at my school, but do I feel this has happened?

COMMISSIONER RUIZ. During World War I, the Indian languages were used in the field of communications—

MRS. PARRA. Right.

COMMISSIONER RUIZ. —and the enemy was completely, couldn't decodify the language.

MRS. PARRA. I know.

COMMISSIONER RUIZ. And it saved the lives of millions, hundreds of thousands of soldiers. And my simple inquiry is: Has this ever been, as a matter of pride, taught in either your school or any school that you know of as of value?

MRS. PARRA. Okay. There is a Navajo language program at my school which is fairly new. It is about 2 or 3 years old. However, I think we have to credit the young people, who are so much like the ones who were up here just a moment ago, with driving home to us the value of this language, the beauty of it, the importance of it, and they are the ones who are the force behind us working to preserve it.

ACTING CHAIRMAN HORN. Thank you.

Commissioner Rankin. Commissioner Freeman. Mr. Glick, anything further? Mr. Buggs.

MR. GLICK. I have none.

ACTING CHAIRMAN HORN. Thank you very much for joining with us. We appreciate it.

Will the next panel, the Gallup-McKinley County administrators, Mr. Woodburn, Mr. Plummer, please come forward.

[Mr. A. C. Woodburn and Mr. Abe Plummer were sworn and testified as follows.]

TESTIMONY OF MR. ABE PLUMMER, MEMBER, BOARD OF EDUCATION OF GALLUP-MCKINLEY COUNTY, AND MR. A. C. WOODBURN, SUPERINTENDENT OF SCHOOLS, GALLUP-MCKINLEY COUNTY SCHOOL DISTRICT

ACTING CHAIRMAN HORN. Please be seated.

Mr. Glick.

MR. GLICK. For the record, gentlemen, will you please state your name, business address, and occupation?

MR. PLUMMER. My name is Abe Plummer. My address is Box 332, Ramah, New Mexico, working with the Ramah-Navajo High School there.

MR. GLICK. Mr. Plummer, are you a member of the Board of Education of Gallup-McKinley County?

MR. PLUMMER. Yes, sir.

MR. GLICK. Mr. Woodburn.

MR. WOODBURN. My name is A. C. Woodburn. I am Superintendent of Schools, Gallup-McKinley County School District.

MR. GLICK. Mr. Woodburn, we have heard testimony suggesting that the students and at least one teacher see a need for a specific program, a program specifically designed for American Indians. Are there such programs in the Gallup-McKinley school system?

MR. WOODBURN. We are developing such programs. There are two factors which make this development a problem area. One is materials which are graded for use in a particular grade level of activity. Another is securing people who are trained in teaching in these areas.

We feel like, through pilot programs and through such as Mrs. Parra described, we are making progress in this area.

MR. GLICK. Mr. Woodburn, there was a lawsuit against the Board of Education of Gallup-McKinley County, and the State

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and other defendants, brought by some Navajo parents and children. I think it can be called *Natonabah* v. *Gallup Board of Education*. Of course, you are familiar with that case.

The court, in its opinion, the district court, found that the Title I and Johnson-O'Malley funds were used to pay for programs for which operational funds from the State and local monies, and impact aid, Federal impact aid funds, should have been used. And that, as a result, the Indian students were not getting their share of the operational funds, and non-Indian students were getting an increased share.

Can you tell me what changes have been instituted to remedy this deficiency as the court found?

MR. WOODBURN. Of course, one of the deficiencies which was found was that there was some Title I equipment in schools which were, at the time of the hearing, not classified as Title I schools. This equipment was moved. Also, according to our '72-'73 cost breakdown, we have achieved equalization on last year's operation in operational funding or operational fund expenditures.

MR. GLICK. And this met the requirement that the court set down?

MR. WOODBURN. This has met the requirement, as far as last year.

However, the requirement is that a plan be submitted for '73–'74, starting September the 1st. This plan was submitted. It was rejected. One of the parts of the plan, of course, stated that based on the first 40 days of enrollment, the plan would be revised. This is in prospect and in project right now.

MR. GLICK. Can you tell me how many Navajo teachers, or Navajo-speaking teachers, are employed by the Gallup-McKinley system?

MR. WOODBURN. I don't know how many Navajo-speaking teachers. Some of our non-Navajo, non-Indian teachers, speak some Navajo. There are approximately 30 to 35 Indian teachers employed by the district last year. We have not surveyed this year as yet.

MR. GLICK. When you say "Indian teachers," you mean of all tribes, not necessarily Navajo?

MR. WOODBURN. Right.

MR. GLICK. Are these certified teachers or teacher's aides?

MR. WOODBURN. These are certified teachers.

MR. GLICK. How many teachers are there in the entire system?

MR. WOODBURN. Approximately 600.

MR. GLICK. And of these, 35, you say?

MR. WOODBURN. Approximately. We have a problem in this area. One is certification requirements are of necessity met. There is a requirement that they have certain college degrees and this sort of thing.

Our people, our Indian people, when they get these requirements, can receive much higher salaries by either working for the tribe or the BIA and not for us. Our salary schedule in the Gallup-McKinley district is about median for the State of New Mexico.

MR. GLICK. Have you made any attempts to recruit more Navajo teachers?

MR. WOODBURN. We have made consistently recruiting efforts for Navajos. In fact, the Gallup-McKinley County School District was one of the first school districts, and the only one, up to last September, which provided a career ladder system for teacher aides to develop into teachers.

ACTING CHAIRMAN HORN. Mr. Woodburn, excuse me. Let me ask you to furnish for the record, if you would, the salary schedule for the McKinley School District. And Mr. Glick, will you secure the relevant schedule of the Bureau of Indian Affairs, and it will be Exhibit 38.

[The documents referred to, to be marked as Exhibit No. 38 for identification, were received in evidence.]

MR. GLICK. Yes, sir.

MR. WOODBURN. Salary schedules for teachers?

ACTING CHAIRMAN HORN. For teachers or whatever, general salary schedules, counselors, administrators. I just want this as a matter of record to relate the Federal schedule and the State-county schedule.

MR. WOODBURN. All right, sir, I will send it to you.

MR. GLICK. You have mentioned this kind of upward mobility program for teacher's aides who can get certified. Has the school system given any assistance to persons who want to be in that program, and has it been successful?

MR. WOODBURN. The school system did develop the year before last, a salary schedule for teacher aides based on—one of the factors was experience. Another was college hours. And there has been a consistent effort to get these people into college hours, either at summer session or other places and recognize this. And the use of teacher aides by the district has been one of the ways in which bilingual-bicultural movement could be made in the program, since we could not hire bilingual-bicultural persons in the teacher.

MR. GLICK. Mr. Plummer, as a member of the Board of Education of Gallup-McKinley County, do you think there is adequate Navajo participation in the meetings of the school board?

MR. PLUMMER. In the actual meetings, no. There's hardly any Navajo parents, Navajo individuals actually coming to our meetings either just to be there or to participate.

MR. GLICK. Why is that, in your opinion?

MR. PLUMMER. Well, I guess there are many factors for this.

One of the biggest ones is the factor of transportation. Getting in to the meetings on particular nights at a place 70 miles removed from where you live, you know, is quite a job, I think.

The other, I think, is that in the past, so far as Indian participation is concerned, Indian people, we Indian people have been patronized to think that the job will be done for us. I think this was done through various means like by outright denial, through intimidation, condescensions, or even just what I might call the missionary zeal. "We will take care of it all" attitude by the school people of the past. This is not only public school people but also Bureau schools.

And I think that having Indian people being fit into this pattern for so many years, it is hard to get from under such a situation. I think that because of this, many of our Indian parents just don't fully understand this education that we are speaking of.

I gather that the education that you are talking about is your own type of education, the anglicized type of education.

I think that there is real educational processes also in the home. But, yet, the school systems of today offer only of themselves because you know that type of education is, quote, the American way. And Indian people in the past have always been intimidated to think that only the—again, quotes, the American way is the best way.

But I feel that the two are not really parallels, but educators make it that way.

I think that some time has got to be spent to begin a thrust for total community education. I said this time and time again. And if we expect parents to participate in educational meetings, school board meetings, whatever, they first have to know what education is all about because I think there's a confused situation in their minds.

The sheep herder, as he sits at home, is educating his child by nurturing him, by raising him to become a complete person. That's the same thing that you people are doing, in a sense.

So this is why I say that the two educational systems are not parallel, but it's educators of today that make it that way. And so when asked about parental participation, I, you know, was speaking from a very personal view. This is, I think, speaking on my own principles, that in order for us to get parental participation, that is both white and Indian, is to get our parents to think education and to understand education.

MR. GLICK. Mr. Plummer, you are the director of the Ramah-Navajo Indian High School, which is a school run by the tribe under contract to the BIA. Would you contrast the kind of—or compare—the kind of education that you think the children get at the Ramah-Navajo High School and the kind of education that they get in the high schools operated by the Gallup-McKinley County Board of Education?

Mr. Plummer. I think you give me a beautiful opportunity to brag about ourselves a little bit. What I mean by that is, I believe that in a situation such as ours, where the Indian people, the Ramah-Navajo Indian people, for years and years have been asking for education, the American education, anglicized education, but they never received anything. But I think back in the 1930's, they got a 1-room building. But any other type of education experience has always been away from home.

So when they made up their minds to contract, to incorporate and then to contract for operational monies with the BIA, they then began to realize that the types of education or the type of educational preparation that their children were receiving were, in many ways, below par. When I say "below par," we found that in our school, the children were—so far as achievement is concerned—were anywhere from 1 to 6 years behind. And we felt that in many ways the things that contributed to this, in part, was that as the student entered school, he was already pretty much educated in his own way.

But, yet, that education or that preparation that he was given is always ignored by the educational systems that we have today. And so as the kid progresses, he regresses 1 to 2 years because he's having to think in two languages: his first language, and then to try to translate a new language, and then try to speak it back in another language or his own language and then, finally, it comes out in a mixed-up affair where he is trying to articulate something that is, you know, inbetween.

So when the Navajo people that are contracted, I think when they began to realize this sort of a situation, they told us then to gear our curriculum to meet those particular and very special needs, curriculum that would have an affective approach, that would not only speak to developing cognitive skills, but also to think of himself as a person.

Because I feel that when I spoke earlier about Indian people also having real education and the education that we speak of today not being parallels, I think both sides are trying to do one specific thing, and that is to get a young person to become a complete person, and so that once he gets this, I think that then we have developed him into a person who is then excited about learning.

Now, the whole approach that we are using here at Ramah is just this. If all we can do is get the kid to get and be excited about learning, I think we have got the battle won because he can go anyplace, to anybody's world, because he will, you know, undertake whatever.

And so, in this way, when we contrast a contract school that the Indian people are running themselves as versus a public school, a Bureau school, I think in our case we have been able to identify the educational needs of the students, and we have been able to gear down curriculum to those particular needs because we are a small body and, also, you know, we have really no one to hassle us excepting the community that we are working with.

MR. GLICK. Thank you, Mr. Plummer.

Mr. Chairman, I have no further questions.

ACTING CHAIRMAN HORN. Commissioner Rankin.

COMMISSIONER RANKIN. Yes, I would like to ask Mr. Woodburn a question.

You have a program underway, a bilingual and bicultural program, for instance, in the Gallup High School?

MR. WOODBURN. Yes, sir. And in our other schools also.

COMMISSIONER RANKIN. Could you spell that out for me just a little bit so I will know something about them. Are you adding new courses? Are you changing the content of courses?

MR. WOODBURN. We are, for the most part, right now, making Navajo—teaching Navajo as a foreign language. We have not yet gone to the point in our high school program where we are teaching science and social studies and the other content field in Navajo or in Zuni, either one. These materials, at this point, have not been developed to the extent, nor has our expertise in teaching these been developed to the point where we can do it. However, we are teaching the language, Navajo, in Gallup High School.

COMMISSIONER RANKIN. Now, does this place a harder burden upon those students desiring to take Navajo? Do they have to take English too? Is that added to their daily work, or is it in lieu of other work?

MR. WOODBURN. It is in lieu of other work. It is—a certain number of credits is required for graduation, some of which are required by the State.

COMMISSIONER RANKIN. Is this a required course?

MR. WOODBURN. This is an elective.

COMMISSIONER RANKIN. It is elective; is that correct?

MR. WOODBURN. Right.

COMMISSIONER RANKIN. And they can substitute this course in Navajo for another elective course, is that correct?

MR. WOODBURN. That is correct.

COMMISSIONER RANKIN. What do they usually give up to take Navajo?

MR. WOODBURN. Various things. Maybe—I don't know what they usually give up. I think this would require a rather intensive survey because we don't know what their choices would have been if we had not been offering Navajo.

COMMISSIONER RANKIN. It puts a little burden on them, though, doesn't it?

MR. WOODBURN. I don't think it puts any greater burden on them to take this than it would some other elective.

COMMISSIONER RANKIN. But if they want to take Navajo, they can't take other electives, can they? They have got to take Navajo?

Mr. Woodburn. That's right. But this is the whole elective system, Mr. Commissioner.

Commissioner Rankin. I understand.

Mr. Woodburn. They can't take everything that we offer. So they have to elect some things.

Commissioner Rankin. Well, do you ever let them take both Navajo and English and the general regular load? Do you ever let them do that?

Mr. Woodburn. Yes, sir. They can take—

Commissioner Rankin. Do some of them do it?

Mr. Woodburn. Some of them take six subjects a day.

Commissioner Rankin. And how do they get along?

Mr. Woodburn. It all depends on the individual students, of course. Some of them get along quite well. Others not quite so well.

Commissioner Rankin. But they are no worse than the average student not taking this program, is that correct?

Mr. Woodburn. That is correct. Of course, we have many non-Navajos who take Navajo language also.

Commissioner Rankin. You say "many." What percentage?

Mr. Woodburn. I don't even know what the percentage is.

Commissioner Rankin. Thank you.

Acting Chairman Horn. I wonder if we could just furnish, to elaborate that statement, how many students in the high schools under your jurisdiction have taken Navajo in the past academic year and what proportion of those are non-Navajo. I think this would help elaborate it. We could make that Exhibit 39, if it has to be an exhibit.

[The document referred to, to be marked as Exhibit No. 39 for identification, was received in evidence.]

Mr. Ruiz?

Commissioner Ruiz. I have no questions.

Acting Chairman Horn. Mrs. Freeman?

Commissioner Freeman. Mr. Woodburn, in one of the earlier student's testimony the statement was made that the history is inaccurate with respect to the contributions of the Indian and/or the Navajo. I would like to know if you as superintendent have been—have read the history that is used and if you have an opinion with respect to that statement?

Mr. Woodburn. It's my opinion that any time a text is used which discounts individuals, discounts a race or discounts a group of people, it should be—that particular part should be expurgated from the curriculum because our job in education is not to criticize but to build up.

Commissioner Freeman. And have you eliminated this textbook from the curriculum?

MR. WOODBURN. We have not eliminated all the textbooks which are critical of the Irish, the Indians, the blacks, the Italians, the Chinese and so forth because it's a matter of economy. We have instructed our teachers to not use that particular part and, if the students ask questions, point out that this is not the purpose, our purpose or the purpose of education, to be critical of races or people.

COMMISSIONER FREEMAN. So you have put economy ahead of a good education for the students, of "economy" I say?

MR. WOODBURN. We will be putting economy still further ahead of good education when the State by taking credit for all of our Public Law 874 funds equalizes the district and takes out anywhere from $1.7 million to $2.3 million out of our operational budget year after next. So economy is a real important factor.

COMMISSIONER FREEMAN. You have not answered my question with respect to this textbook which you admit is inaccurate.

MR. WOODBURN. I have not read the textbooks. All of them. Some of them I have. Those which have brought home criticism, we have not adopted in the adoption cycle. Those which are being used, we have attempted to eliminate if there is criticism against the textbook.

COMMISSIONER FREEMAN. What would be the procedure that the parents and students and public should follow to get an inaccurate textbook removed from the curriculum?

MR. WOODBURN. First of all, the textbook should be called to the attention of the principal and that then should be also called to the attention of the superintendent who would refer it to the instruction division and from there the inaccurate textbook, hopefully, would be removed, or that part of it removed.

COMMISSIONER FREEMAN. Since it has already been called to your attention, have you done that?

MR. WOODBURN. Yes, ma'am.

COMMISSIONER FREEMAN. Thank you.

ACTING CHAIRMAN HORN. I'm sort of interested in references to the Irish since I am half Irish, half German, and I'm beginning to feel like I have German humor and Irish efficiency. But let me move on to one point, Mr. Woodburn, that you said about the credentialing of the teachers.

In California there is authority to grant special or emergency credentials to meet certain needs. Does Arizona and New Mexico, in your case, have a similar law where special credentials can be granted to meet certain needs even though they might have had in our case, the fifth year in California, so forth?

MR. WOODBURN. New Mexico does have this. However, it is limited in practice to take care of special needs.

ACTING CHAIRMAN HORN. What is the decisionmaking point on granting such credentials? State, county, superintendent?

MR. WOODBURN. State.

ACTING CHAIRMAN HORN. So that would be granted to the State superintendent of schools for public instruction?

MR. WOODBURN. That's right.

ACTING CHAIRMAN HORN. I wonder in the problem of upgrading teachers so they have the credentialing that our society, I think sometimes unfortunately, requires, to what extent are the universities cooperating in providing extension courses in the area during the regular year? Does the New Mexico State University and the University of New Mexico offer courses in Gallup, say, which your teachers could attend, or does everybody have to wait for summer school and move to Albuquerque and Las Cruces?

MR. WOODBURN. There are some extension courses. Since there is a branch of the University of New Mexico in Gallup there are some courses which are offered during the regular school session.

ACTING CHAIRMAN HORN. Do you feel they are adequate for the demand for courses for credentialing?

MR. WOODBURN. Of course the demand has to exist. They don't meet all the needs. However, the need, as I see it, is being met better progressively as we go down the road.

ACTING CHAIRMAN HORN. Mr. Plummer, I'm curious, you quite correctly said that parents have to think in terms of education. I'm wondering how we reach parents.

One thing that concerned me as a parent in both Washington, D. C., and Long Beach, California, where my children have gone to integrated schools, is that on parent's night it seems to be the white parents that show up and not as many black parents show up. Now, we're talking here about Navajo parents. What do we do to get parents involved and showing up and taking an interest in the school district and school system, in your judgment?

MR. PLUMMER. I feel that if you— When I made reference to it, that there must be a total community education program so far as we Navajos are concerned, and to point out that the education that they had—this is their own Indian education—is just as good as the education that we are imposing on them. And somehow or another if we can get them to understand that the two are not parallels but the two can complement each other, I think that then they can begin to understand what the educational system is all about. Because, in many ways whenever you ask a Navajo parent who is out there someplace in the plants, "Why are you sending your child to school?" He or she will say, "Because it's the law." And when one says this, that tells me that somebody has intimidated this person and that answer to me is very superficial.

To me, when someone says, it's because of the law, he or she doesn't really accept that education is good or maybe not good. So that's why I say a great deal of attention has to be dealt to educating mother, father, child, together, and not just child by himself, because, you know, for you people, you must understand where the educational system began someplace back in the old country, and when the industrial revolution moved in, well, something had to be done with the children so babysitting was the answer. And that's where we actually are.

And we've got to get away from that kind of institutionalized thinking. We have got to get back to thinking mother, father, and child, let us learn together.

ACTING CHAIRMAN HORN. Well, I completely agree with you as an educator. I think that perhaps the most unused buildings in America are the public school buildings which seem to operate from 9:00 to 3:00, and the sooner we make them community centers where there can be learning and other activities for the whole family, I think the better off the society will be. And I wonder how you would react, both of you, to the proposal—and I gather the Navajo nation is pursuing this to a certain extent—of educational radio and television where you put a transistor in every home on the Navajo Reservation to provide some sort of fulfillment for the whole family?

MR. PLUMMER. Let me comment on this. We have radio education over in Ramah, and I think this is—this has tremendous effects in this theory I'm talking about. It's not even theory, we're doing it, educating mother, father, and child together. We were very fortunate in the early stages of our school development to get funding to build us an F.M. radio station and so there's F.M. radios in each home, and so daily we're talking to the parents about education; the student is talking to the parent about education, and the parent is also talking to the student about education, and, you know, it's a complete reciprocating sort of a situation. I think it's beautiful.

ACTING CHAIRMAN HORN. That's great.

Mr. Buggs, do you have any questions?

MR. BUGGS. One or two.

Mr. Woodburn, most of the discussion this afternoon has been related to the needs of the Navajo school children in terms of education, and I'm wondering if there isn't a sort of concomitant need on the part of teachers for education with respect to the Navajo people themselves and the children that they teach. And if that is so, do the Gallup-McKinley schools have a program designed to provide that kind of education for teachers?

MR. WOODBURN. We attempt to do this through in-service programs, orientation programs. Sometimes it is not very effective. Sometimes it is quite effective. However, the community, the local community and the chapters and the people in the attendance centers through their activities have assisted in this to a great extent. But I think to give a person, a foreigner so to speak, in one or two sessions what the community people have learned during an entire generation or several generations requires quite a bit of doing.

MR. BUGGS. Do you have any idea what percentage of the total in-service training budget is given over to that purpose?

MR. WOODBURN. No, sir, I do not.

MR. BUGGS. Would it be small or large, would you say?

MR. WOODBURN. I would assume that for that which is designated for this particular purpose would be rather small. We have a rather small in-service budget initially.

MR. BUGGS. As superintendent do you think it's important enough to try to increase it?

MR. WOODBURN. Yes, sir, I do. However, again, we run into the economics and, if we can get these kinds of things done, cultural awareness, this sort of thing, other ways, then I think here is a place that we can make an impact on the total educational picture.

MR. BUGGS. No more questions.

ACTING CHAIRMAN HORN. Mr. Glick, any further questions?

MR. GLICK. No, sir.

ACTING CHAIRMAN HORN. If not, thank you very much, gentlemen.

The Commission will take a 10-minute recess, reassemble at 5:35.

ACTING CHAIRMAN HORN. Will the panel representing the San Juan County Schools, Mr. Yanito, Mr. Benally, Arlene Dennison and Jack Hennessy; are all four present?

VOICE. Mr. Yanito couldn't make it.

ACTING CHAIRMAN HORN. Mr. Yanito couldn't make it.

[Mr. Dan Benally, Ms. Arlene Dennison, and Mr. Jack Hennessy were sworn and testified as follows.]

TESTIMONY OF MR. DAN BENALLY, MEMBER, POLICY COMMITTEE, SAN JUAN COUNTY SCHOOLS; MS. ARLENE DENNISON, TEACHER'S AIDE, BLUFF ELEMENTARY SCHOOL; AND MR. JACK HENNESSY, LAY ADVOCATE, DNA LEGAL SERVICES PROGRAM

ACTING CHAIRMAN HORN. Please be seated.

Mr. Joseph Muskrat, our regional director for the Mountain States Region, a member of the Bar, will conduct this portion of the questioning.

MR. MUSKRAT. Would each of you please state your name, address, and occupation for the record? Mr. Benally, would you—would you like to testify in Navajo, Mr. Benally?

MR. BENALLY. Yes.

MR. MUSKRAT. Dr. Billison, Mr. Benally would like to testify in Navajo, so if you would be so kind to translate for us. And the first question is, Would you please, Mr. Benally, state your name and address and occupation for the record.

[Translation into Navajo.]

MR. BENALLY [translation from Navajo]. I am Dan Benally, from Bluff, Utah. I'm a member of the Policy Committee of the San Juan County Schools and also involved in the Head Start program.

MR. MUSKRAT. Ms. Dennison?

MS. DENNISON. Arlene Dennison. I'm from Bluff, Utah, and this year I'm the aide to the kindergarten teacher in the Bluff Elementary School.

MR. HENNESSY. I'm Jack Hennessy. I'm from Mexican Hat, Utah, and I'm lay advocate with the DNA Legal Services.

MR. MUSKRAT. Ms. Dennison, could you describe for us please, where the schools are located in San Juan County, the high schools. Can we begin with high schools, please?

MS. DENNISON. There's a high school in Monticello, Utah, and there's a high school in Blanding, Utah. To my knowledge. Now, I don't know if they have a high school at La Sal or not, but I know La Sal is in the San Juan County district.

MR. MUSKRAT. These two high schools that you mentioned, are they on the reservation?

MS. DENNISON. No, they are not on the reservation.

MR. MUSKRAT. Are they located in the northern part of the county off the reservation?

MS. DENNISON. They are off the reservation.

MR. MUSKRAT. Yes, ma'am. And the grade schools, could you tell us where the grade schools are located?

MS. DENNISON. We have a grade school, elementary, down at Montezuma Creek and Bluff and Mexican Hat, as well as the ones in Blanding and Monticello and the others.

MR. MUSKRAT. And, Ms. Dennison, can you tell us where the Indian people live in San Juan County, the biggest majority of them?

MS. DENNISON. The biggest majority of them live on the south side of the river, which is the reservation. There are a few homes on the north side and a few homes in Blanding, primarily those that are working for the school district and other jobs.

MR. MUSKRAT. Now, Ms. Dennison, you have, as I understand it, one son who just graduated from high school and one in San Juan High School, and one daughter who is in high school now; is that correct?

MS. DENNISON. That's correct.

MR. MUSKRAT. And as a kindergarten teacher and a parent, can you describe some of the problems that you feel that the Indian children face in being educated in both the elementary and high schools?

MS. DENNISON. Well, I guess I was mostly primarily concerned with the high school students because my son would come back with a lot of feedback about the things that were going on in the high school. Other students confided in him since he was the president for the Indian Club, and it seems that the biggest headache was this dress code business where they would take time out from school time and measure the girls' skirts and the length of the hair had to be off the collar and a little bit of the ear lobes showing and eyebrows and so forth. And again, this year it's the same thing.

My daughter was made to sign a statement saying that she had broken the dress code of the San Juan High School about a quarter of an inch and so that's a real violation, and this seems to be the biggest gripe that our Indian students have. And I could say some of the white young people in Blanding.

MR. MUSKRAT. Ms. Dennison, do you know how the dress code is formulated? In other words, do you know how the dress code is created? Who makes the dress code?

MS. DENNISON. Well, I can't really say. What I've seen is on paper. It's already been made. I don't know—I suppose—well, I don't really know whether it's the parents or the—

ACTING CHAIRMAN HORN. It is written down, is it?

MS. DENNISON. Yes.

ACTING CHAIRMAN HORN. Let's put it in the record as Exhibit 40.

[The document referred to, to be marked Exhibit No. 40 (and renumbered 41) for identification, was received in evidence.]

MR. MUSKRAT. Ms. Dennison, did either you as a parent or any other parents that you know in the school district have any input into the formulation of the dress code?

MS. DENNISON. Not—

MR. MUSKRAT. Were you consulted or were any of your friends—any other parents consulted?

MS. DENNISON. We weren't consulted. The only thing I was concerned about, because it was hurting my young people, and so I got up on my ear about it and went to talk to the superintendent and then he advised my not talking to the school board because he felt they wouldn't know enough about it, and so he set out a time when I could talk with the principal of the Blanding High School and just a few of the faculty. And so actually, as far as any input, unless the parent himself feels concerned about it, well, there's no consultation as far as I know. It was because of my concern that I met with these men with no seeming result.

MR. MUSKRAT. Do you know of any students who have been expelled from school or suspended from school for violating the dress code?

MS. DENNISON. For perhaps maybe a day or so. Not any real terminated sort of—

MR. MUSKRAT. But they were suspended for a day or so?

MS. DENNISON. They were told not to come back unless they had their hair cut or things like that.

MR. MUSKRAT. Ms. Dennison, based on your knowledge were any of—were the parents informed why the child was suspended?

MS. DENNISON. Well, the parents that I'm thinking of, and the boy that was suspended for a few days to my knowledge, was not informed.

MR. MUSKRAT. I was thinking specifically of Mr. David Yanito's daughter.

MS. DENNISON. Yes.

MR. MUSKRAT. Was he informed?

MS. DENNISON, And then he had a son that has left the high school to go to another school because of this hair business.

MR. MUSKRAT. Ms. Dennison, could you explain the cultural significance to Navajo and I believe they have some Ute students up there, do they not?

MS. DENNISON. Yes, they have a few Utes.

MR. MUSKRAT. —the cultural significance of long hair to the Commissioners?

MS. DENNISON. Well, it's traditional as far as the long hair goes, and I guess it has come in recently more strongly since the whites have brought, more or less, this long hair business—the hippie-type people or whatever—and so a lot of our Navajo young boys have said, Well, don't be down on us. This has been our culture in the past; it's been part of our way of life. Our grandfathers have worn the long hair with the knot and so forth and so on, so that should be our privilege if we want to go back to that sort of thing.

MR. MUSKRAT. Ms. Dennison, then according to the dress code, as you understand it, a student can wear his hair in a bun; is that correct?

MS. DENNISON. Yes. Now I can speak for last year when my boy was letting his hair grow. They made him tie it back. They said during school hours it should be tied back.

MR. MUSKRAT. Ms. Dennison, if the hair is to be tied back, either in a bun, or short; is that correct?

MS. DENNISON. Yes.

MR. MUSKRAT. Well, how does the student let his hair grow long enough to tie it in a bun if it must be cut short or tie it in a bun?

MS. DENNISON. That's where the problem is in that inbetween stage because all they end up, I guess, is kind of—sort of a sick looking pony tail.

MR. MUSKRAT. Ms. Dennison, it's our understanding that this is one of the largest school districts in the country and geographically, not by population, but by geographic area—and it's also our understanding that some students have to travel up to 89 miles or 3 hours on a bus to get to school?

MS. DENNISON. Yes, that's very true.

MR. MUSKRAT. Which is 6 hours a day in transit. Would you care to comment what effect this has on the students?

MS. DENNISON. Well, I guess perhaps the biggest effect it would have is their having to get up early in the morning and especially during the winter months they go to school in the dark and they come home in the dark. And many of them don't have electricity and which makes homework and that sort of thing a real chore, besides the home chores that they have to do. And so consequently, it tells on their studies. They don't get their homework done; they ride the bus almost all evening and that sort of thing.

Mr. Muskrat. What is the school district doing to solve this problem? Do they have, for example, feeder bus lines with minibuses, helicopter service, any type of air transportation, or how is the school district approaching the problem of the 3-hour bus ride?

Ms. Dennison. Up until this year, I guess, the buses were managed by the school district, but it's my understanding that this year the buses have been taken over by a private company. But it's also my understanding that they are still crowded. I talked to a little Ute boy that has to ride the bus along with the high school students and Friday, when he came home from school he had to sit on the step in the aisle—you know, right there by the doorway, which to my knowledge would be illegal or unsafe.

Mr. Muskrat. My next question is addressed to Mr. Benally.

Mr. Benally, as a member of the school policy committee what input do you and other Navajo parents have in the policy of the school?

[Translation into Navajo.]

Mr. Benally [translation from Navajo]. The children that I'm involved with are very young and therefore, we have to program this as we would very young children in the area of feeding, clothing, and also assisting them in attending classes.

One of the jobs that I do is I also bring them to school and return them after their classes. They attend a half day of classes and we have to revert to a system or a method where, like we would take care of very young children.

Mr. Muskrat. Mr. Benally, you are supposed to advise the school board, are you not, on Head Start programs, Title I, and Title VII programs, are you not?

[Translation into Navajo.]

Mr. Benally [translation from Navajo]. The answer is no, that we really haven't got involved in this program because the Title I and Title IV programs in my estimation are really not geared to the type of work that we do, and most of the professional people, non-Navajos or Anglos, have the certain knowledge that they try to explain to us so that we could be part of the program.

Mr. Muskrat. Mr. Benally, is what you are saying— It's my understanding that you are on an advisory board which is supposed to advise the school on these programs. Now, is it my understanding that what you are saying is that this is correct, that you don't sufficiently understand the programs in order to adequately advise the school board?

[Translation into Navajo.]

MR. **BENALLY** [translation from Navajo]. No, I understand the intent and purpose of the school program. What I don't understand is the ways that these funds are obtained because it is very difficult to get these funds, and we are being told that these funds are for the underprivileged and the Anglos that are in charge of the program, they do request that we assist in the formulation of the program which is really not under way at this time.

MR. **MUSKRAT**. Do you understand the program?

[Translation into Navajo.]

MR. **BENALLY** [translation from Navajo]. Yes, and I might explain it this way: that recently we did have a meeting and several types of programs have been explained to us and that, with the parents and the members of the committee, we are requesting that bilingual education be included in some of these school programs, and we are also working on the possibility of funding schools for handicapped. And I realize that there are different programs for all these different types of children, but we do try to get funding of all these different type programs where there's a need in this particular community, but we feel that what we need to express to be part of the policy is what rests with the parents.

MR. **MUSKRAT**. Ms. Dennison, as a parent with a child who just graduated and one child in school, to your knowledge has the school done anything to inform you or other parents about the various Title programs and the Head Start program for those parents who have children in the Head Start program?

MS. **DENNISON**. Well, as a parent, no, but since I'm teaching I have come into knowledge of these different programs.

MR. **MUSKRAT**. What about the other parents living in San Juan County? Does the school board—for example, do they have any type of school newspaper that they send out to the parents in order to explain the different programs that the school has?

MS. **DENNISON**. Not to my knowledge because I as a parent have never received anything like that, and as far as any radio announcement, I listen quite a bit to the station in Cortez and the station in Blanding, and quite often I hear results of school board meetings and announcements of school board meetings and so forth like that over the Cortez station, but nothing over the Blanding.

MR. **MUSKRAT**. I see. Ms. Dennison, as a teacher and as a parent, what input do you have into the determination of curriculum of the school?

MS. DENNISON. Well, as a teacher, it's primarily with the grade school with which I am working; but, as far as any input, let me just recall a few instances that happened just lately.

We were told as a P.E. teacher and art teacher that we were allotted $2,000. Now, I don't know which fund this came from, but the director from Blanding came down and he told us, "You make out a list of materials and equipment that you can use for these programs." So the kindergarten teacher and I sat down and we made out a list of things we thought we could use very well in the P.E. program and the art program, and so we thought, well, that would pretty well cover the $2,000 that they told us we had.

So then here about 2 weeks ago, he came down and informed the teacher that they had ordered wrestling mats, I think two or three of them, which totaled $3,000, or something. So, I mean, as far as our input goes into something like that, we already had mats at our school and why we had to get these wrestling mats is beyond me.

And the same thing with curriculum. We were called up to a meeting at the curriculum center to give our ideas on materials that we would like to see developed as far as bilingual sort of thing, and after we talked about some science things and so forth, then the director there said, "Well, you know of course we will be putting out another coyote story." Well, we already have two of them, and these cost, I believe he said, for seven minutes, $7,000. Well, I kind of cringed because I see in our classroom things that we could use as far as equipment and materials that would help us far more than another coyote story. I will agree they are fascinating and they're interesting, but that's an awful lot of money to go into 7 minutes.

MR. MUSKRAT. Mr. Hennessy, as a lay advocate for the Navajo legal services program, DNA, is it my understanding that you conducted an investigation of the San Juan schools; is that correct?

MR. HENNESSY. Yes, it is.

MR. MUSKRAT. Mr. Hennessy, could you give us the results of that investigation and would you please touch upon the use of Title funds, how much Title funds the district receives and what these Title funds are used for, how effective the programs are and how much parent involvement there is in the termination of the programs?

MR. HENNESSY. Okay. Let me start first with the non-Title aspects and then I'll go into the Title funds and the JOM [Johnson-O'Malley] funds later.

The school district itself has several deficiencies that I can see. One is that it has for a district the size of that, it has one special education class which presently has 8 students and will expand possibly to 14. That class is held in Blanding Elementary School. Now, if there were a retarded child or a child that needed special education living outside of Blanding anywhere from Blanding to Oljato, the busing period may be anywhere from an hour to conceivably, if the student were a high school student, 3 hours. I think the whole category of special education is lacking. In fact, last year they had a program at the Mexican Hat School of remedial reading. This year they don't have it.

Busing, I think we've touched on. One other aspect of the busing situation is once these kids get bused from say, 6:00 o'clock in the morning—they probably got up at 5:00, maybe 4:30 in the morning—they get bused all the way to school, they get there at 9:00 o'clock in the morning; they have to wait all the way till noon to get a meal. This, you know, could put very much hardships on certain kids. It's no wonder that the dropout rate is higher in the area south of, say, Mexican Hat, for high school students than it is in any other area because of the busing issue mainly.

The food services vary throughout the district, not too much in most of the schools except for Bluff. In the Bluff School they truck down hot lunches from Blanding, and I understand many of these lunches end up being something less than hot by the time they hit Bluff. They have a cafeteria at a mission some 2 or 3 miles away from the Bluff School which used to feed the children. For some reason this year that program is not operational. So the students eat in their classrooms; they don't have what you call a lunchroom at the Bluff School, and this creates a lot of problems, especially for the younger children I would think.

Extracurricular activities vary greatly throughout the district. For instance, in all the southern schools—those are the ones that the Navajo students would attend more likely, or Blanding High School—in the southern schools, the elementary schools, there's no band program. Now, in the northern schools they have band and music programs for the children.

There's very little athletics in the southern schools. These are elementary schools. In the high schools they do have athletics but again the busing problem comes in here. For a preseason training in football they have no buses running so the child from Oljato say, would have to have his parents bring him 3 hours up to attend preseason football and 3 hours back.

This tends to keep people out of athletics. During the season they have an athletics bus, activity bus, that goes down to Mexican Hat, but again, if you are student from Oljato, you've still got to hitchhike or have your parents pick you up at Mexican Hat and take you a half hour to 45 minutes down to Oljato. The sports activities and athletics for women students, and this would touch on Navajo women students mostly, is totally lacking.

The physical plants, just to look at the physical plants of the schools themselves, you can see a tremendous inequality.

MR. MUSKRAT. Would you hold off on that question and I will ask you specifically about each school.

MR. HENNESSY. Okay.

The faculty. The faculties in the southern elementary schools, the ones that are again Navajos primarily attend, have a very high turnover rate, much higher than the schools up north. They have a lot of trouble keeping teachers down there. This may have an effect on the education. I'm not saying that new teachers aren't good teachers; it's just that it may have an effect on some students to have the constantly changing faculty.

Most of the teachers are Anglo teachers. I believe there are 7 Navajos out of about 109 in the district. They do have tutors and aides, most of which are Navajo, and I think they have one Ute aide and some Anglos.

The curriculum, as I can see it, being outside the school system itself, not being a teacher or a student, the curriculum is vastly unequal, and I think you can partially tell that from just the equipment difference in the schools. I'll get to that when you ask me about the various schools.

There is little art as art classes in the south. Most of the teachers do their own art activities in the south. Up north they have art classes. They do have an arts and crafts class this year in some of the southern schools.

Almost no music again, as I said.

The physical education program is very limited in the southern schools. They have much more physical ed in the northern part of the schools.

Such things as science labs are almost totally lacking in the southern part. Very, very minimal science equipment at all.

In the field of student rights, I've been accused of being a little biased on the hair issue by the school district people, but I would like to expand a little on what Ms. Dennison had to say, and that is that I think the school district has lost enrollment from what it projected this year. It's down considerably. It's mostly down in the southern schools and I think in the Blanding High School, if I'm correct on that. And I would attribute that in large part to the dress code along with the busing. Many, many students have come through our office concerned with the hair issue, especially, and would just plain go to other schools because so far the courts have not been very favorable to long hair cases in this circuit.

The dress code is erratically enforced. You can go to Monticello High School where apparently they've had parent and student and teacher involvement in forming the dress code, and kids can wear their hair longer, women walk around in pants, women students. It's not what I call liberal dress code, but it's more liberal than the rest of the district.

ACTING CHAIRMAN HORN. Now, is that part of the San Juan County schools?

Mr. Hennessy. Yes.

Acting Chairman Horn. So presumably the same dress code applies to that high school?

Mr. Hennessy. Presumably. They do have, I think, phrasing in the code that says in certain instances the principals can use their discretion. But again, if Monticello—that's where very, very few Navajo students go to—has a very liberal dress code in comparison with the rest of the district, San Juan High, where most of the Navajo high school students go to, has a very strict dress code. In fact, that has possibly more strict adherence to the dress code than any other school in the district. And again, it infringes on the traditional beliefs of the Navajo students tremendously. You just cannot get your hair long enough to put in a bun over the summer. There is just no way possible.

There are no prior hearings before suspension of students. Students are suspended, and I would say that the suspensions for Navajo students are in many cases different than it would be for a white student. In fact, I've seen forms—people who have gotten expelled from classes or from school in Blanding will come into our office and, if they are Navajo, they have a form in many cases that says to the parent, "We need to talk this thing out with you. If your kid is causing problems, if he doesn't quit, or if you don't want to come in and talk about it perhaps you should think of sending him to a vocational or boarding school because he's a discipline problem," language to that effect.

Now, they're not going to give that to a white student because no white student is going to go to a BIA boarding school. But they will infer, with especially the use of vocational school and BIA boarding school, that these students are something less than what the Anglo students are.

On staff rights, a large—actually not so large—part of the noncertified, nonteaching staff—that excludes tutors and aides—I would say probably less than half of the staff are Navajo to begin with, but there are really no staff guidelines and policies.

There was a case where a staff member got more or less terminated from his job because his political beliefs for one thing, and there's just no policy—no grievance procedures that were followed at all. There were no grievance procedures even provided to either kick him out of his job or for him to try to get his job back, and it took a very long time to get him reinstated, several months as a matter of fact, because nobody knew where you go to get, a Navajo staff person especially, rehired. He had to go through the parent advisory committee and everything else. I doubt that a white employee would have had to go especially through a parent advisory committee first.

For the schools in the south, being so very close to an area that has a lot of unemployment, there's still very significant amount of Anglo employees that are not certified teachers or aides or tutors. I'm referring to kitchen help, janitors, thing of this nature. We have schools that are right on the Navajo nation that have people working in the kitchen when there are people that are qualified to do that—Navajos qualified to do that rather than Anglos down there. And as I say, the unemployment rate is very significant down there.

The voting districts were gerrymandered much worse than they are now at one time, but now they are more or less rigged to have three Anglos and two Navajos. A lot of people will say, well, you could elect a Navajo from one of the three Anglo districts. Well, one of the more qualified candidates you will ever find, Navajo, ran last election and got beat four to one in the one district that includes a few Navajo people.

ACTING CHAIRMAN HORN. Excuse me at that point.

Are these districts apportioned on a one-man, one-vote basis?

MR. HENNESSY. I believe they fall within the 16 percent allowance.

ACTING CHAIRMAN HORN. Okay. So it's just the way the district lines are drawn, but they have roughly equal population?

MR. HENNESSY. Yes, roughly equal population in certain instances I would say. What happens is you have half a county, almost exactly half Navajo and half white, yet you do have a case where there is not going to be three Navajos on that school board, conceivably, ever.

Okay, I'll get to the Title programs now.

The district has a rather large Title I program. It goes upwards to about $320,000 and sometimes higher than that, depending on the year. They have about $100,000 worth of Title VII funds this year, I believe. JOM funds went up significantly from about $16,000 to nearly $120,000 this year. They also have UDIA funds, that's Utah Division of Indian Affairs funds, that are used by the schools and that can go anywhere up to around, I'd say, $50,000. They have a very huge chunk of Federal impact aid funds; I believe in '71-'72 year they got $600,000. This budget shows anticipated $200,000, but apparently the school district is very confident they will get again the $600,000 or maybe more this year on that. So they get a very high amount of Federal funding for a school budget that, I guess the anticipated budget for next year, for this school year rather is around $4 million, or something like that.

These funds, as you know, the Title funds have very strict guidelines. The JOM funds not so much. What happens with the Title funds is a lot of supplanting. You just—if you walk into the schools you just see a lot of things in the north that they don't have in the south, and what they do have in the south they label Title I equipment, and in the north it obviously comes from general funds.

The schools are not comparable. The district admits this in its comparability report. I don't even think they are as comparable as the comparability report shows they are, and they are not to begin with. A lot of the figures in the comparability reports are based totally on estimate. They don't have, as I understand it, totally separate school budgets for each school in the district. Parts of the budget are separate but not all, so you can't possibly do anything other than estimate when you figure comparability.

The district claims to have a very good bilingual program. Now, if you consider interpreters having a bilingual program, then I'd say they are right. But the aides and the tutors do not much more than interpret. When a child cannot understand English then—and I would say this is in district terms--resort to Navajo.

There is no Navajo language class in the elementary schools. There is a Navajo language and culture class at the junior high level. The aides do not totally take over the classroom and teach totally in Navajo in most of the schools and possibly all, and this is according to direct information I received from people in each school and often the very leadership of those schools will admit that their bilingual program is not a bilingual program.

They put out materials in what they call the curriculum center based on Navajo culture, as Ms. Dennison has mentioned; they put out coyote stories. These stories are supposed to only be told or shown or whatever, during certain times of the year, according to Navajo tradition, and that's mostly in the wintertime, as I understand it. At one point I was at a meeting that was in the very late spring in which these were shown, and many of the older people were—it was shown to the parents to show them what was coming out of the center—and I think this offended people tremendously. It couldn't help but offend people by totally disregarding traditions that way, putting on a story that's very traditional and has very deep meaning and showing it at a time of the year that it's just not supposed to be shown.

They have needs assessment meetings as Title I schools are supposed to have. These needs assessment meetings are supposed to go beyond parent advisory committee. They are supposed to get right at the people that are served. The district tries hard not to get people involved. They will get a select group and invite them to a meeting and, in fact, there was a case down in Mexican Hat where a community meeting was in progress. Someone brought in a note to one person inviting them to a needs assessment meeting, told them specifically not to show it to the entire community. This person did, in fact, show it to the entire community and said, there is a needs assessment meeting scheduled.

This does not—this is an effort by the school district not to contact the parents. They'll claim that they invite a small group of people, I suppose, for the purposes that it's easier to get ideas from a small group than it is from a large group, but I don't quite believe that.

They use Title I salaries for people I don't think should be receiving Title I as a part of their salary. This includes librarian for part-time, music teacher for part-time. Now, it would seem to me that schools in their general fund would budget for librarian and music teacher and things like this. The fact that they may teach music to some Navajo children or to some other eligible Title I children does not mean—

MR. MUSKRAT. Mr. Hennessy, we will get into the curriculum in just a minute. But could I ask you a question? You mentioned busing. Can you tell me from what region most of the children are bused? Which part of the county? Where is the biggest busing problem?

MR. HENNESSY. The biggest busing problem is the Oljato problem, which is in the extreme southwestern part of the county. As Ms. Dennison said, I believe, it's about 3 hours.

ACTING CHAIRMAN HORN. I didn't hear the name of the district.

MR. HENNESSY. Oljato, O-l-j-a-t-o.

MR. MUSKRAT. Are most of these busing problems concerned with high school students?

MR. HENNESSY. Almost exclusively, yes.

MR. MUSKRAT. And where are the two high schools located?

MR. HENNESSY. Blanding and Monticello.

MR. MUSKRAT. The northern part of the—off of the reservation; is that correct?

MR. HENNESSY. Absolutely. Blanding at the closest point is probably about 25 miles from the reservation.

MR. MUSKRAT. Do you know why there's no high school in the southern part of the county on the reservation or close to the reservation?

MR. HENNESSY. Well, it just seems to be the trend even in the building of schools, other schools, you see the big buildings, the good buildings get built in the north first, and gradually they get down to the southern part, and they finally build decent schools, and I think maybe some day they'll end up with a high school at Monument Valley or someplace.

MR. MUSKRAT. Just to ask you one final question. There are, as I understand it, three—or two elementary schools on the reservation, Mexican Hat, Montezuma Creek, and Bluff, which is just across the river, off of the reservation, but it's very close to the reservation. It's just north of San Juan River, which is on the northern border of the reservation.

Can you tell me how the schools, both—well, first of all, let's start with—well, both elementary and high schools compare in the following classes with those schools in the southern part or on the reservation? First of all, in regard to class size, do the schools on the reservation compare favorably as far as class size goes? In other words, are classes about the same, or are they more crowded in the southern half, or what?

MR. HENNESSY. Well, as far as teacher to pupil ratio goes they are very similar. There's a lot of overcrowding in some of the southern schools, however. You'll find several mobile units at these schools and those mobile units do not have sanitary facilities and the kids will have to, in the wintertime, walk across the street.

MR. MUSKRAT. The second half is what you just answered, is physical facilities. Would your testimony be then that the schools in the southern half of the county have poorer physical facilities than those on the northern part of the county off of the reservation?

MR. HENNESSY. Absolutely. You can just go from the north to the south and you can see the gradual decline of the schools. Even though—

MR. MUSKRAT. What about curriculum?

MR. HENNESSY. I think the same thing is true of curriculum. You can go from the north and back in Monticello Elementary School I walked into a room that had tremendous amount of scientific equipment, drawers full of cassette tapes, at least 500 record albums, and other resource equipment that was not anywhere near that found in even the southern schools combined, I would say.

MR. MUSKRAT. Thank you very much.

Mr. Chairman, I have no further questions.

ACTING CHAIRMAN HORN. Thank you, Mr. Muskrat.

Let me just identify that assisting in advising on this question was Mr. William Levis, our attorney in the Mountain States office in Denver.

Mrs. Freeman?

COMMISSIONER FREEMAN. I have no questions.

ACTING CHAIRMAN HORN. Mr. Ruiz?

COMMISSIONER RUIZ. Ms. Dennison, as a teacher and as a parent you may be able to answer my question. It's more of a curiosity on my part.

I've heard of many reasons why conformity in dress codes or to dress codes have been sought. We have a couple of educators on our Commission. I've never taken the time to ask them, but since I have you at hand on the witness stand, I'm interested in learning the rationale in your area. For example, are the dress codes based upon a show of authority, an exercise in authority to show who's boss for disciplinary purposes, taking into account the well known fact that youngsters are nonconformists, or is the dress code based upon some physical reason such as trying to keep the girl students warm, or upon some other consideration such as making the youngsters more moral, or are the teachers themselves distracted so that the teachers themselves can concentrate better?

I'm just curious to know because I'm not a professor or I'm not a teacher, but as a parent and a teacher maybe you can answer that question.

MS. DENNISON. Well, I think you hit the nail on the head when you made your first statement about the dress code being primarily a tool to show who's boss and talking with the principal of the Blanding High School, he admitted to me that—maybe not the exact words—but he said, "I have to admit I'm proud of my students the way they look. People have come in from other counties and other schools and have remarked on how well our students look, so I'm proud of my students."

And I thought to myself, well, that's just it. Your pride has overrun the students, their feelings, and you know, just that sort of thing. And the San Juan High School has been noted to put down another high school which does not have dress codes as strict and are quite liberal, putting them down by calling them drug users and long hairs and all this sort of thing. But it was quite ironic when my son went over there for a cross-country meet and come to find out all these drug users and long hair boys were the ones that ran off with the trophies, so I don't know just what San Juan High School is really trying to prove other than we have a nice-looking student body. Not much of a school spirit, but we have a nice, good-looking student body.

COMMISSIONER RUIZ. Thank you very much.

ACTING CHAIRMAN HORN. Commissioner Rankin?

COMMISSIONER RANKIN. I have no questions.

ACTING CHAIRMAN HORN. Mr. Buggs?

MR. BUGGS. No questions.

ACTING CHAIRMAN HORN. I have just one question.

I'd like to, so I can fully understand Exhibit 40, which is the San Juan School District student dress code, having a teenage daughter I know what shorts, bermudas, pedal pushers, cut-offs, and levis, all of which are prohibited, but I never heard of grubbies. Could you enlighten me, Ms. Dennison? What are grubbies?

MS. DENNISON. Grubbies are these faded-out levis that have been cut off and fringy on the end, maybe a few patches sewed on here and there.

ACTING CHAIRMAN HORN. I stand educated.

Any further questions?

If not—oh, one question, Mr. Alexander.

MR. ALEXANDER. Are there alternatives to busing; what alternatives do the Navajo high school students have?

MR. HENNESSY. The obvious answer is to build a school down in the southern part of the county.

MR. ALEXANDER. No, I mean right now. Other than riding a bus what can a kid do? He can drop out or he can do what?

MR. HENNESSY. Mostly that's what happens. They drop out or the absenteeism rate is phenomenal. The alternative for the district might be to try to ship some of the students to the Kayenta School District and bus them down and pay the Kayenta School District for taking those students. They did that in the past, but I think there was some problem with that so they discontinued it.

MR. ALEXANDER. What about boarding facilities in the northern cities?

MR. HENNESSY. Well, you've got Intermountain Boarding School up in, I believe, Brigham City; but that is being closed, as I understand, and they have had a lot of problems up there. They do have the Aneth Boarding School, but I believe it only goes to elementary.

MR. ALEXANDER. What about foster homes?

MR. HENNESSY. That's a big practice. What happens is they take a lot of students, Navajo students, from Oljato, from even—from the Ute people who are just outside of Blanding, and the welfare department, or the Mormon placement program takes these kids, puts them in homes in Blanding and Monticello, and you get a lot of problems arising out of the placement program, but it's one of the few alternatives for a child. If you don't want to sit 6 hours on a bus, you leave your home, you leave your family for at least 5 days a week and possibly all 7, and go into someone else's home. Sometimes these people have several students in the welfare program; they make about, I think, $100.00 a student. It's very lucrative.

MR. ALEXANDER. Ms. Dennison, could you just briefly comment about the cultural impact of foster home programs; what an impact that has on the Navajo culture of the students? Briefly?

MS. DENNISON. Well, the students that I have been acquainted with that have been out on these placement programs have been in foster homes, primarily Mormon homes, and so naturally they come back with the ways of the white man and some of them try so much to be like a white person that they're rejected by some of the young people right there in Blanding High School because they're just kind of a misfit, I guess. I don't really understand why it should be that way, but that is my knowledge of them.

ACTING CHAIRMAN HORN. Thank you very much for joining with us.

The next panel will be the San Juan School District administrators; Mr. Lameman, Mr. Maughan, please come forward.

[Mr. Tulley Lameman and Mr. Kenneth Maughan were sworn and testified as follows.]

TESTIMONY OF MR. TULLEY LAMEMAN, MEMBER, SAN JUAN COUNTY SCHOOL BOARD, AND MR. KENNETH MAUGHAN, SUPERINTENDENT, SAN JUAN SCHOOL DISTRICT

ACTING CHAIRMAN HORN. Please be seated.

Mr. Muskrat?

MR. MUSKRAT. Gentlemen, would you please state your name, address, and occupation for the record?

MR. LAMEMAN. I am Tulley Lameman. I live at Montezuma Creek, Utah, and my occupation is an employee of the Utah Navajo Development Council.

MR. MAUGHAN. I am Kenneth Maughan, superintendent, San Juan School District, Utah.

MR. MUSKRAT. Mr. Lameman, when were you elected to the school board?

MR. LAMEMAN. I was elected in 1972.

MR. MUSKRAT. Can you tell me how many members are on the school board?

MR. LAMEMAN. Five.

MR. MUSKRAT. And how many of those are Navajo?

MR. LAMEMAN. Two of us are.

MR. MUSKRAT. And how many are Ute?

MR. LAMEMAN. There is none from the Ute.

MR. MUSKRAT. We understand that your school board actively supports bilingual education. What programs do you have in the area of bilingual and bicultural education?

MR. LAMEMAN. Well, in the bilingual we have a program and it's under one of the Title programs, and we have teachers who are—and then we have teacher aides who are in the bilingual program.

MR. MUSKRAT. And how are these programs constructed? In other words, who is the one who designs the program? What kind of input do you have in that area?

MR. LAMEMAN. Much of the structuring is done where we have our high school and the elementary principals. Now, they recommend certain programs and then the school board acts on these recommendations, and—

MR. MUSKRAT. You have an advisory board, do you not, a community advisory board for these programs; for Title programs?

MR. LAMEMAN. Yes, we do.

MR. MUSKRAT. How are they chosen?

MR. LAMEMAN. We call this the parent advisory committee, and then we have parents in these different schools, schools like Montezuma Creek, Bluff, Mexican Hat, and in Blanding too.

MR. MUSKRAT. How are the parents chosen?

MR. LAMEMAN. In these schools the parents of the students meet, and they choose the people who are going to be on this advisory council.

MR. MUSKRAT. So in other words, they are selected by the community; is that correct?

MR. LAMEMAN. That's right.

MR. MUSKRAT. We understand that you have an Indian education center that is charged with the development of bicultural and bilingual programs. Could you explain the function of that center, please?

MR. LAMEMAN. The Indian education center is there to try to help the Indian students in different ways, and we have the curriculum center in which materials are developed for the—mainly for the Indian students in all grades and these—much of these are developed at the request of the teachers who are involved with these Indian people.

MR. MUSKRAT. Mr. Lameman, who is in charge of these centers, the curriculum center and the Indian education center?

MR. LAMEMAN. Mr. Lynn Lee is in charge of it.

MR. MUSKRAT. Is he an Anglo or Navajo?

MR. LAMEMAN. He is an Anglo.

MR. MUSKRAT. And his staff? Who is his staff composed of? Are they Indian or are they Anglo?

MR. LAMEMAN. Part of the staff is Anglo; part of it is Indian, mainly Navajos.

MR. MUSKRAT. And who evaluates the effectiveness of the programs after they have been developed by the two centers?

MR. LAMEMAN. The Federal money that has been used in these programs has certain guidelines, and these are the tools to evaluate the programs.

MR. MUSKRAT. So they are evaluated according to Federal guidelines; is that correct? Is that your testimony?

MR. LAMEMAN. Right.

MR. MUSKRAT. You heard, I assume that you heard the testimony concerning the dress code?

MR. LAMEMAN. Yes.

MR. MUSKRAT. Can you explain to us, first of all, the purpose of the dress code? Why do you have a dress code if it creates so much animosity among parents and students?

MR. LAMEMAN. It was developed mainly because we needed some guidelines within the school system as to what to do with certain—mainly with the hair and with the dress and some of the type of clothing that was being worn in the schools, and we developed these because the schools, like the Monticello High School with their parents and then also with the Blanding High School, requested that there be developed a dress code. And in developing these dress codes we have tried to get the involvement of the parents. This was the intention of school board and also that these dress codes are not there permanently. They are there because we need to get some reaction from the people, and also we would like to see the parents and some of teachers recommend if there are changes to be made, recommend them so that we know what the feeling of the parents are. So far we haven't, as a school board, we haven't heard anything yet.

MR. MUSKRAT. Mr. Lameman, you heard something just this afternoon, and what—and my question I suppose is this: Why are you so concerned with the way a student appears as opposed to the way a student learns?

MR. LAMEMAN. It is mainly the concern of the students and the teachers and the parents, and we acted on their recommendations.

ACTING CHAIRMAN HORN. If I might be permitted an observation. I've seen the phenomenon before where parents want the education and school system to achieve what they can't achieve at home, which is one possibility for such codes.

MR. MUSKRAT. You heard testimony a little earlier about the busing problem that some Navajo or some Indian students have to travel great distances on the bus. Are you doing anything to alleviate this problem and, if so, what?

MR. LAMEMAN. We have been concerned with this for some time, and at the present time we are asking for Federal funds so that we can do a feasibility study on the location of a high school, and our intention is to locate a high school on the reservation. But the exact location we don't know right now. And we want to get a feasibility study on this, and at the present time our Federal funds are not coming forth and our intention is to, if we cannot get this Federal fund, then the school district will do the study itself.

MR. MUSKRAT. Mr. Lameman, I am told that you've already completed five or six feasibility studies on this; is that correct?

MR. LAMEMAN. This I'm not aware of.

MR. MUSKRAT. May I ask Mr. Maughan, then, is that correct?

MR. MAUGHAN. Not this type of a study, no.

MR. MUSKRAT. What types of studies have you done? What types of feasibility studies have you done on the reservation?

MR. MAUGHAN. We have never conducted a feasibility study for an additional high school in the south end of the county because we have never had that many students in the south end of the county. I just might add here, you can go to Mexican Hat 5 years ago and we had around 20 or 30 students at Mexican Hat School. We've had a big influx of Indian students coming into our district in the last 5 or 6 years.

MR. MUSKRAT. Mr. Lameman—

ACTING CHAIRMAN HORN. Excuse me, counsel. Do we have the demographic statistics as to how many students by age group there are in the southern half of the county?

MR. MUSKRAT. Yes, sir, we do.

ACTING CHAIRMAN HORN. Can we enter that as Exhibit 41?

MR. MUSKRAT. Yes, sir.

[The document referred to was marked Exhibit 41 (renumbered 42) for identification and received in evidence.]

MR. LAMEMAN. Let me add another statement to that, the busing problem. What we're doing is we're expanding the schools in the southern end of the county, and we're adding facilities to the school, the existing school facilities; and, also, we intend to reduce the busing problem by bringing down some of the grades, like fifth and sixth, back to Bluff, so that we would eliminate that much busing. And also, through the location of another high school, this would also reduce the busing problem.

MR. MUSKRAT. Mr. Lameman, have you thought of how you can educate children on the bus? For example, having some type of class on the bus so that that would be in lieu of class they would attend at school; something on the order of looking into helicopters to get some of these more remote students in, the possibility of feeder buses into a main bus route to help cut down on the bus ride of the students? Have you considered any alternatives such as this, or any other type?

MR. LAMEMAN. We do have some feeder buses right now. And as to the helicopter or other matters, we haven't looked into it.

MR. MUSKRAT. Mr. Maughan, can you—have you brought with you a breakdown of the different ethnic groups that are teaching in your school, both professional or certified personnel and noncertified personnel?

MR. MAUGHAN. Yes.

MR. MUSKRAT. And could you give us those figures? Can you give us the total of those figures, not broken down by school, but the total for the entire district?

MR. MAUGHAN. Yes.

The total figure for professional employees in our district is 149. Eleven are Navajo people. We have 157 classified and from this 157 there are 88.

MR. MUSKRAT. There are 88 what?

MR. MAUGHAN. Indian employees.

MR. MUSKRAT. Fine.

MR. MAUGHAN. This makes a percentage of 56 percent of classified, 7.3 for the professional, or 32 percent of all the employees in our district are other than Anglo.

MR. MUSKRAT. Mr. Maughan, there are bicultural programs in Montezuma Creek, Bluff, and Mexican Hat Elementary Schools? Can you explain to us how these programs work and in what grades you offer them?

MR. MAUGHAN. We have about five supplementary programs that are designed to help the Indian students. One is Head Start. I'm sure you are all familiar with Head Start. The second program is the bilingual program. We are on the fifth year of the bilingual program. This involves the students at Mexican Hat, Bluff, and Montezuma Creek. And the concept of this program is to provide instruction to the Indian children in their own native language. So in the same classroom it's possible that we have two teachers, an Anglo teacher and an Indian aide or an Indian teacher and an Indian aide. Now, this is the fifth year for the bilingual program. It's an outstanding program.

MR. MUSKRAT. And these three schools that you mentioned the program is offered, they are in the southern part of the county on the reservation, are they not?

MR. MAUGHAN. They are on the reservation.

MR. MUSKRAT. It is our understanding that students are given release time which is during the class period to attend religious services at seminaries which are located next to two high schools; is that correct?

MR. MAUGHAN. This is the State law. This is correct, that San Juan High School at Blanding and the Monticello High School, under certain stipulations, and certain guidelines—

MR. MUSKRAT. Could you explain how that program works for us, please?

MR. MAUGHAN. Yes.

The State law is that there can be no intermingling of church and state. The seminaries are located not on the school property but off the school property adjacent to the school property. The students, upon bringing a permit from their parents, may be released from the high school schedule for 1 hour or 2 hours per day to attend what we refer to as release time.

The students can be given two units of credit, one that deals with the New Testament and one deals with the Old Testament. These two units can count towards filling the electives in their high school graduation requirement.

Now, the seminary teacher is not part of the faculty, does not come to the faculty meetings, and as high schools we try to exclude them from such things.

ACTING CHAIRMAN HORN. Excuse me a minute.

I take it that law applies to all religious faiths in Utah?

MR. MAUGHAN. Yes, that applies to all 40 districts in Utah.

ACTING CHAIRMAN HORN. And any religious faith which offered an educational program could take advantage of it?

MR. MAUGHAN. The same thing was offered, for example, about three years ago at Monticello. The Catholic Church wanted the same arrangement. They used the same building as the other release time—

ACTING CHAIRMAN HORN. One more question. That's done during the course of the regular academic program, you don't do it after school and hold the buses until those on release time come back to go home on the buses, or do you?

MR. MAUGHAN. That is correct; we do not.

ACTING CHAIRMAN HORN. You do not. Because in California they used to do that, which thoroughly irritated me.

Mr. Muskrat. Mr. Maughan, you don't see any problem with giving credit for this? That's, in your opinion, not a violation?

Mr. Maughan. No, I personally do not because any student can take the class. You do not have to be a religious denomination to take the class.

Mr. Muskrat. What if a Navajo student came to school with a note asking that they be released, or some type of Navajo or Ute, whatever the case may be, religious service, would you let them go?

Mr. Maughan. If they would provide the teachers, if they would provide the building, if they would provide the same things so that there would be no tax money, no personnel used, then they could do the same thing.

Mr. Muskrat. Has that ever been done?

Mr. Maughan. Yes, it has been done.

Mr. Muskrat. They have been released for some type of Indian religious ceremony, the children have?

Mr. Maughan. Well, I just mentioned many of the Spanish American students, but—

Mr. Muskrat. The Spanish—sorry, I didn't hear you.

Mr. Maughan. At Monticello 2 or 3 years ago the Spanish American students were released to attend the class.

Mr. Muskrat. Have any Indian students, Mr. Maughan, my question is: Have any Indian students ever been released for any type of religious ceremony?

Mr. Maughan. I do not believe they have because I don't think the request has been made. Should it be made they would be.

Mr. Muskrat. So they've been released for some type of Mexican American observation?

Mr. Maughan. If the church makes the request, they have been released, yes.

Mr. Muskrat. All right. Well, what I'm getting at is who has been—what have the students been released for, to the best of your knowledge? They have been released to go to a Mormon seminary. Now, you just testified that some Mexican American students had been released to go to church; is that correct? And that was Catholic, I take it; is that correct?

Mr. Maughan. That's correct.

Mr. Muskrat. Have any other students taken advantage of this release time?

Mr. Maughan. Not to my knowledge.

Mr. Muskrat. Do you give course credit for Navajo culture?

Mr. Maughan. We, at the present time, San Juan High School teaches two classes in Navajo history, two in Navajo culture. They are given credit towards the graduation for these classes.

Mr. Muskrat. And if the Navajo parents got together some type of school for Navajo religion, would they be granted credit for that?

MR. MAUGHAN. If they would provide the teachers and the facilities the same as the other religious denominations.

MR. MUSKRAT. Mr. Chairman, I have no further questions.

ACTING CHAIRMAN HORN. Commissioner Freeman?

COMMISSIONER FREEMAN. Mr. Maughan, will you tell us how many Navajo students have been released to receive religious training at the Mormon seminaries?

MR. MAUGHAN. How many Navajo students have been released to attend LDS [Latter Day Saints] seminaries? May I direct this question to one of my assistants?

ACTING CHAIRMAN HORN. Certainly.

MR. MAUGHAN. Dr. Everett, our secondary curriculum specialist, he has guessed 100.

ACTING CHAIRMAN HORN. Out of how many are we talking about?

MR. MAUGHAN. Well, at the San Juan High School, for example, we have 357 Indian students.

COMMISSIONER FREEMAN. So somehow about one-third of the students get released to attend the Latter Day Saints school?

MR. MAUGHAN. This is the estimate that has been given by Dr. Everett.

COMMISSIONER FREEMAN. And have you had any concern as to whether these students have felt—have been coerced by the teachers to do this?

MR. MAUGHAN. I have no concern or nothing that would lead me to believe they have.

COMMISSIONER FREEMAN. Do you know what the teacher—what procedure is followed, or how a Navajo student comes to believe that there will be value in his getting released from a regular high school course to go to the Latter Day Saints seminary?

MR. MAUGHAN. Well, as I stated before, the class may be designed around the Bible history; it may be designed around the literature, and there may be many things in that class that that student can benefit from. And, as I said, there are many students attend the release classes that are not LDS, so their benefit, their social benefit and their activities and their learning experiences, they must feel there's some need and some benefit.

COMMISSIONER FREEMAN. Do you have a number as to the number of students who have received the training in the Navajo culture at your school?

MR. MAUGHAN. Just a rough estimate. This year we are teaching six classes at the San Juan High School dealing with the language, the history, and the culture. Just in round number, if you'd say 20 in a class, 100 or 120 might be a good guess. I don't know for sure.

COMMISSIONER FREEMAN. How many teachers are involved in teaching the courses in Navajo culture?

MR. MAUGHAN. I believe there's three different teachers—three teachers.

COMMISSIONER FREEMAN. Are these teachers Navajo?

MR. MAUGHAN. Yes.

COMMISSIONER FREEMAN. Thank you.

MR. MAUGHAN. I might add, we offered four classes in the Navajo language. We only had enough students to sign up for two and maybe one.

COMMISSIONER FREEMAN. I have no further questions.

ACTING CHAIRMAN HORN. Commissioner Ruiz?

COMMISSIONER RUIZ. I have no questions.

ACTING CHAIRMAN HORN. Commissioner Rankin?

COMMISSIONER RANKIN. As school administrator, leaving aside money, what is your greatest problem right now?

MR. MAUGHAN. We have many problems.

COMMISSIONER RANKIN. I grant that, but—

MR. MAUGHAN. You've heard some of them. We're the largest school district in the United States. We send students to two different States plus another county in Utah, Grand County.

COMMISSIONER RANKIN. You call that a problem, do you?

MR. MAUGHAN. It's very much of a problem, busing, the geography.

COMMISSIONER RANKIN. If you had to rate busing, dropouts, dress codes, or general conduct, which is the greater of these four problems, would you say, in your school system? Busing, dropouts, conduct, or dress codes?

MR. MAUGHAN. Well, I'm sure many of them tie together. Your dropout and your dress code and some of these, but—

COMMISSIONER RANKIN. You mean they drop out because of dress code?

MR. MAUGHAN. I don't think they do, but it's been repeated here this afternoon they do. I'm sure maybe some of them do, but I'd just like to make a statement on our dress code. I think it's been overexaggerated here. We have a dress code because the majority of our parents and the majority of our students feel like that's what we want to have.

COMMISSIONER RANKIN. Did you ever take a vote on it to find out—how did you ascertain the majority?

MR. MAUGHAN. We have representatives on our student council, we have representatives of students who are elected as student body officers, and these students formulate what they call the student council. We have parents on our student dress code. We have asked the tribe for their recommendation and their advice on the dress code. I can produce a document where we have asked the tribe. We never receive an answer.

ACTING CHAIRMAN HORN. You asked the Navajo Nation formally for this or a local chapter?

MR. MAUGHAN. Raymond Etsitty at Window Rock here. I don't know his title, but we can send you a letter that we sent them, the dress code, and we never heard.

ACTING CHAIRMAN HORN. Why don't you furnish it and we'll put that in as Exhibit 42.

Along the line of Dr. Rankin, do you have the proportion of student officers on the student council that are Navajo? Could you furnish that for the record?

MR. MAUGHAN. Be glad to.

ACTING CHAIRMAN HORN. Just to answer the question.

[The documents referred to, to be marked Exhibit No. 42 (renumbered 43) for identification, was received in evidence.]

COMMISSIONER RANKIN. General conduct is not a problem? You don't have trouble with alcohol, you don't have trouble with anything like that?

MR. MAUGHAN. Any school has trouble with alcohol and conduct. We feel we have a minimum amount compared with some schools.

COMMISSIONER RANKIN. Well, thank you. I just wondered because back in my country in North Carolina we have problems too and we have some very serious problems. We don't have the dress code problem, however; but we do have as far as conduct. We don't have the dropout problem quite as bad as you have, and I was just comparing your description of the administration of your school system with the one in my neighborhood, you see. I hope you have luck in handling these problems. Why don't you abandon the dress code? Do you think anybody would care?

MR. MAUGHAN. We have had a dress code at San Juan High School for 25 years.

COMMISSIONER RANKIN. What if you abandoned it tomorrow, would there be a revolution in San Juan County?

MR. MAUGHAN. I think there would be plenty of parents and plenty of students who would object if we disbanded the dress code policy, yes, because our board of education and administration feels there is a correlation between learning and student attitudes and student dress and student behavior.

COMMISSIONER RANKIN. Thank you very much.

ACTING CHAIRMAN HORN. Do you have any statistical evidence or research studies conducted by the University of Utah or Brigham Young on that correlation that you are aware of?

MR. MAUGHN. Well, I'm sure that —

ACTING CHAIRMAN HORN. Is this just a feeling?

MR. MAUGHAN. No, I'm sure that there has been some studies that's been conducted that might indicate that the learning rate as compared with some of these things, and I don't have any—

ACTING CHAIRMAN HORN. Well, I'd sure love to have that as Exhibit 43, if you can furnish it for me.

MR. MAUGHAN. We'll sure try.

[The information referred to, to be marked Exhibit No. 43 (renumbered 44) for identification, was received in evidence.]

ACTING CHAIRMAN HORN. Good.

Mr. Buggs?

MR. BUGGS. Only one question.

I assume that the students that go to the seminaries or to other places for some kind of religious training go by bus? They have to be transported?

MR. MAUGHAN. No, the seminary building is adjacent to the high school.

MR. BUGGS. What about for the Roman Catholic children? You said that there was release for other children too?

MR. MAUGHAN. They used the same building that the LDS used, the same building and they provided their own teachers, so it was just perhaps 30 yards from the high school where they would change classes.

MR. BUGGS. Mr. Maughan, why did the population of Navajos increase so dramatically 5 years ago?

MR. MAUGHAN. I don't know. In 1963 I completed a doctoral dissertation and it was on San Juan County, and at that time in 1958, the enrollment in San Juan County was 6 percent Indian students. By 1963 it had gone to 18 percent, and as you can see now, it's up to 46 percent, but I believe, many reasons. One is, I think, the Indian students prefer the public schools to the Government schools. I believe this is the main reason and the other factor, I think, they prefer to stay at home if they can and go to school. Those two factors.

MR. BUGGS. Thank you.

ACTING CHAIRMAN HORN. Mr. Muskrat, do you have some more questions?

MR. MUSKRAT. Yes, Mr. Chairman.

Mr. Maughan, can you give me a very brief description of your job in your relationship to the school board?

MR. MAUGHAN. In Utah the school board consists of five elected—

MR. MUSKRAT. No, sir, your job? What do you do?

MR. MAUGHAN. Well, I'm just telling you my job with the school board.

MR. MUSKRAT. I'm sorry.

MR. MAUGHAN. They are elected by the people. The school board appoints the superintendent the odd year every other year. And the superintendent is appointed. His main purpose is to carry out the policy that the board of education adopts.

MR. MUSKRAT. Mr. Maughan, who appoints principals of the schools?

MR. MAUGHAN. The school board, board of education.

MR. MUSKRAT. Are there any Navajo principals?

MR. MAUGHAN. Yes. We have the principal at Mexican Hat. At Navajo, the Head Start director is Navajo, and we have several other nonteaching Indian people on our staff.

Mr. Muskrat. Yes, sir. You have one Indian principal, is that correct?

Mr. Maughan. We have one at Mexican Hat.

Mr. Muskrat. And that is all? At Mexican Hat? You just have one in the entire school system? You have one—

Mr. Maughan. Well, I think—

Mr. Muskrat.—Indian principal, is that correct?

Mr. Maughan. Well, what I am trying to say is we have one school administrator as principal. We have several other Indian people in a nonteaching administrative capacity.

Mr. Muskrat. Mr. Maughan, you have any document with you which would give a written breakdown of the ethnicity of the various employees that you have and what jobs they hold, and what schools they hold them in?

Mr. Maughan. I have a chart, but it just breaks them down according to instruction or classified. I don't have school lunch workers or secretaries. Is this what you want?

Acting Chairman Horn. Do you have administrators, teachers, and staff breakdown? Can we separate the principal, assistant principal, assistant superintendent category from, say, classroom instructors, and then separate those from staff? Do you have that data?

Mr. Maughan. We can do that.

Acting Chairman Horn. Could you furnish it just in the same format as you have with student population profile data which includes American Indian, black, Asian American, Spanish surnamed American, and all others? Could you furnish that for the record by school?

And I would like—by the way, counsel, when this data comes in, that will be Exhibit 44—I would like to take that and Exhibit 41 and change them from the schools in alphabetical order to the schools in the northern part of the district and the schools in the southern part of the district, with appropriate proportions and percentages so the reader can grasp what we are talking about.

[The documents referred to, to be marked as Exhibit No. 44, (renumbered 45) for identification, were received in evidence.]

Mr. Muskrat. One more question. This morning you heard testimony from the community panel earlier about the lack of knowledge on the part of the parents as to what is happening in the school. Mr. Abe Plummer made a statement, and I agree with him wholeheartedly, that you have to interest parents in education.

I think you must go one step further than that. You must not only interest them in education, but you must explain to them what a good education is. In other words, to be an intelligent school board member, or to be a parent who is involved in the school, one must know what a good school is. What are you doing to overcome this seeming deficiency? In other words, how are you interesting your parents in education and how are you showing them what a good education is?

MR. MAUGHAN. After every board of education meeting, I write an article that is sent to the local radio station and is sent to the local newspaper. This describes the action that was taken in the board of education meetings. We have the PTA organizations in the county and just the other ordinary things any other school might do.

MR. MUSKRAT. How much participation do you have by Navajo parents in the PTA?

MR. MAUGHAN. Well, I would assume that Montezuma Creek—maybe you'd better ask Mr. Lameman. He's from Montezuma Creek, but I would assume in a school where you have 90 percent Navajo parents, you'd have a pretty good participation.

MR. MUSKRAT. Well, then, let me address a question to Mr. Lameman.

Mr. Lameman, in the elementary schools on the reservation south of the San Juan River and in the two high schools which are north of the San Juan River, how much Indian participation is there in the parent-teacher association?

MR. LAMEMAN. Right now, there isn't very much participation, and we have tried to get the Navajo parents to attend meetings where they could discuss some of the problems they know of and where they could make certain recommendations on the schools. But so far, we haven't received very much participation by them.

And what I have done is gone to the chapter meetings and explained some of the school board actions, some of the decisions we have made, and some of the problems that arise in schools. And I've tried to get them to come out to my home or to meetings where we could discuss some of the problems they know of which exist. But so far, I have not—I haven't been able to get them to come out yet.

But one thing, we—I'm planning on doing next is to make a tape recording of the school board actions and record it in Navajo to put it over the radio stations, local radio station. And also, we are attempting to get certain people who are more influential and more outspoken in the chapters, we are attempting to bring them out so that I can discuss with them some of the school board functions, some of the actions we take, and some of the things we do in the school in hopes that they can relate this to their fellow people.

MR. MUSKRAT. I have no further questions.

ACTING CHAIRMAN HORN. Thank you very much, gentlemen. We appreciate your coming here and taking the time to give us the benefit of your views.

ACTING CHAIRMAN HORN. Mr. Alexander, I believe you have some items to put in the record.

MR. ALEXANDER. Yes.

ACTING CHAIRMAN HORN. Would you identify the items, please.

MR. ALEXANDER. I have five resolutions passed by the national nationwide youth conference held this past August, and resolutions of local chapters in McKinley County, calling for bilingual education. These are from the Red Rock Chapter, the Coyote Canyon Chapter, Standing Rock Chapter, Crownpoint—I hope everyone will excuse my pronunciation, but I think it is the—Cheechilgeetho Chapter.

ACTING CHAIRMAN HORN. All right. And those should be inserted in our discussion of the McKinley County school district, I take it?

MR. ALEXANDER. Yes.

ACTING CHAIRMAN HORN. They will be labeled Exhibit 40, and the exhibits we have put in will be moved up one.

[The documents referred to were marked Exhibit No. 40 for identification and received in evidence.]

ACTING CHAIRMAN HORN. Now, the next panel. We move from the problems of the public schools which are in Utah and off the reservation to the problems of the public schools which are on the reservations. We will have a Tuba City community panel. Vanessa Brown, Marjorie Thomas, Charles Carter.

[Miss Vanessa Brown, Mr. Charles Carter, and Mrs. Marjorie Thomas were sworn and testified as follows.]

TESTIMONY OF MISS VANESSA BROWN, STUDENT, TUBA CITY HIGH SCHOOL; MR. CHARLES CARTER, TEACHER, TUBA CITY PUBLIC SCHOOLS; AND MRS. MARJORIE THOMAS, DIRECTOR, INDIAN CULTURAL CURRICULUM CENTER, TUBA CITY PUBLIC SCHOOLS

ACTING CHAIRMAN HORN. Please be seated.

Mr. Alexander.

MR. ALEXANDER. Could each of you identify yourselves, name, position with the school, if any, and address for the record. Vanessa, please.

MISS BROWN. I am Vanessa Brown. I am a senior at Tuba City High School.

MR. ALEXANDER. Miss Thomas.

MRS. THOMAS. I am Marjorie Thomas, the director of the Indian Cultural Curriculum Center at Tuba City public school.

MR. CARTER. Charles Carter, fifth grade teacher, Tuba City public schools.

MR. ALEXANDER. I will start with Miss Brown.

Miss Brown, we understand from staff interviews and such that last year there was a disturbance at Tuba City High School and you were one of the student leaders in this disturbance. Could you briefly tell us what were the factors that led the students to sit in, as it were, at the superintendent's office—an activity, I gather, which is rather unusual for Tuba City? Could you, briefly?

MISS BROWN. Well, the lack of communication and understanding between teachers and administrators, and to bring attention the problems—we wanted our problems to be known to the community. And there was a lot of corrections we felt needed within the school.

MR. ALEXANDER. Was this the first time, to your knowledge, that there had ever been a demonstration in your city?

MISS BROWN. In Tuba City?

MR. ALEXANDER. Yes.

MISS BROWN. Yes.

MR. ALEXANDER. Did the fact of the school system's programming or lack of programming in relation to bilingual education and Navajo culture at the high school level play any part in prodding the students to take this action?

MISS BROWN. I think so. Yes.

MR. ALEXANDER. Since that demonstration, has there been any increased level of involvement of the community in the educational system?

MISS BROWN. Just a little. Not too many parents are really into the school yet, like we wanted—last year, we wanted the parents in the community to really get into the school and find out, you know, things, and what's really going on in the school.

MR. ALEXANDER. Is the school system basically a separate entity from the community? Do the parents not interact with it at a very high level, Navajo parents?

MISS BROWN. Well, when we had the takeover, we were put down by many parents because they didn't like our tactics, the way we did it. But the thing is, they would have understood if they knew what was going on in the school.

As of now, we have a few alumnis who returned, that were seniors last year, who returned to the school to find out, you know, how things are going. They go through the school and, you know, just sort of check it out. And they are told not to come to the school unless they have an important reason.

MR. ALEXANDER. Do you see any change in policies this year, after the demonstration? Do you see any increased bilingual education or Navajo cultural courses in high school?

MISS BROWN. Yes. I see it's increased a little. We are also supposed to have Navajo studies program and Hopi studies program; but, as of yet, I haven't seen the class going on. And these classes are only for the senior students which, I feel, should come for all of the high school students, instead of in their last year of high school, you know, go into their culture.

MR. ALEXANDER. Okay. Does the lack of Navajo or Hopi culture—you are part, if I remember our interview, you are part of six different tribes—have any impact on the students' attitudes towards themselves, on the school system, on student problems, perhaps drinking that existed in your school system? Does the lack of such cultural awareness classes have any impact on student self-image?

MISS BROWN. Yes.

MR. ALEXANDER. What type of impact does this have?

MISS BROWN. Well, the students want to learn, you know, their culture, their traditions. And like last year, we didn't really have these classes and people didn't really care to come to school, and they felt they were just being brainwashed to one culture.

MR. ALEXANDER. Do some of your friends and yourselves who are Indian students find themselves in high school not knowing about their traditions and not being able to speak Navajo, not being able to go back and perhaps talk to their grandmothers or grandfathers? Is this a common occurrence now?

MISS BROWN. Yes. I would say a lot of the older people, when the younger people try to talk Navajo or something, they laugh at them because, you know, they say, "You don't know how to talk Navajo." But, you know, we try. Even I do.

MR. ALEXANDER. Even you do.

Mrs. Thomas, I gather you are a bilingual specialist, then?

MRS. THOMAS. Yes, I am.

MR. ALEXANDER. Most of your program, however, is at the elementary school level?

MRS. THOMAS. It's K through junior high.

MR. ALEXANDER. Could you briefly explain what you do in your program?

MRS. THOMAS. Right now, just recently, we've been funded for the center, and the Indian Cultural Curriculum Center is going to be a place, when it's all completed and set up, a place where teachers can find resource material on Indian tribes—films, filmstrips on displays, study units on different things—and classes could be brought to the center. And, hopefully, we will have consultants, maybe weaving or doing silversmithing or maybe telling legends in Navajo, and the classes would be brought to the center for the children to see and to hear and to, you know, take something from it.

MR. ALEXANDER. This, I gather, is an expansion over last year's program?

MRS. THOMAS. Well I was in on the planning, and I would say, yes, because this is what the students wanted. However, this is only up through eighth grade.

MR. ALEXANDER. It is only up through eighth grade. Do you think it is essential that it go throughout the whole school system?

MRS. THOMAS. I'm very much for bilingual-bicultural education because I have had the opportunity of teaching Indian teachers, teaching Anglo teachers, which I am doing now, too, and feel that the Indian students lack self-identity. If the Indian student, from the beginning, say 5 years old, began to learn about himself, began to know who he is, where he came from, where his parents or grandparents came from, where he is going, I think—I honestly do feel that there would be no militancy on our reservation.

And I think due to some of us parents who saw this too late—and it's going on—that a lot of AIM groups are gathering together on our reservation. But honestly, truly, I do feel this.

And in last year's student takeover at the office, I had three of my own born children involved in this walk-in. And to really tell the truth, I was very much embarrassed. I was very much hurt, but I did not turn to my children and get after them. I took this as something I failed to do. It was my duty to teach my children their behavior, to teach them who they were, to teach them to be proud. And that's what we are supposed to be. We are supposed to be proud Navajo people.

And since the Treaty of 1868, our grandparents did speak up for us and they said, "From now on, we are going to be peaceful." And this, I don't see very much among the youngsters now. There is a lot of militancy, and I do put the blame on parents who have failed to teach their children the culture, to try and retain the culture. And I did plead with them, and I always do try to listen to Indian children when they do have problems and try to understand them, and I think a lot of people just downgrade them without trying to understand them.

MR. ALEXANDER. Thank you. Mr. Carter, I gather that you grew up in Tuba City, went to school there, and came back to teach there, is that correct?

MR. CARTER. Yes, it is.

MR. ALEXANDER. What would you say is the quality of education being provided by that school system to Indian students?

MR. CARTER. Well, since I have come back, a lot of the problems have happened. When I went to high school there, I was able to get through college by virtue of the fact that I speak English. I don't think the curriculum, as such, was really played down that strongly, and a goodly percentage of the high school class that I graduated with went on to become successful in careers that needed a college education and so on. I haven't stayed in close touch with all of them.

But I think, partly because of the number of students involved in the system now, and a lot of the problems in our community—it's a community of transition like I've never seen. I might add we don't just have the Navajo problem—

MR. ALEXANDER. You have the Hopi.

MR. CARTER. The Hopi land dispute, the number of people who have moved into Tuba City from a very traditional way of life who don't have room there to raise sheep and to live in a traditional manner, and many parents who are working full-time, both parents whose children are free to roam quite a bit now, also come across a lot of the problems that you see everywhere today.

And so, yes, there's been a tremendous growth in Tuba City since I moved there. And along with this growth, you know, as far as the school and the community are concerned, a lot of these problems are born out of it.

MR. ALEXANDER. Do you think the school system expects the same level of performance from Indian students as it does from the white student population?

MR. CARTER. Not altogether, no.

MR. ALEXANDER. Is it a lower standard that they require from the Indian student?

MR. CARTER. I believe this is true because of the fact that, when standard curriculum is presented, the amount of understanding that the majority of the Indian students show is far less than that of the Anglo.

MR. ALEXANDER. In the long run, would you agree that that shortchanges the Indian student?

MR. CARTER. Certainly it does.

MR. ALEXANDER. You are obviously an Anglo teacher who has spent a long time on the reservation and has made efforts to understand in teaching the school system. What about the Anglo teachers who come on, having never grown up in this environment? What kind of ability do they have to relate to the students? What kind of ability and preparation do they have to relate to Navajo culture and in Tuba City, Hopi culture? Is it a system that works?

MR. CARTER. No. As was mentioned with the panel before us, there's a tremendous turnover. Of course, this varies from year to year. Some years, we don't have as many teachers, I believe, as others.

I think a lot of the younger teachers become a little disenchanted, perhaps, with the lack of entertainment that would be afforded them in a larger community. There are many factors involved in teacher turnover and teachers' inability to really understand the problems of the students and the problems they are having trying to get ideas across to the students. My suggestion for those people would be to take a long, hard look during that first year that they are there and try and get out into the community a little more.

I think I've heard a lot of comments, and I notice people up here are kind of hesitant when they are asked, "Why don't Indian parents come to PTA meetings, to board meetings," et cetera, et cetera. Well, I don't think they really feel they are important and they are not made to feel like they are really important, and I think it's a teacher's job from grade one through senior high school to turn on the kid enough about what he's doing there, about what's going on in school for him to carry it home to these Navajo parents. And I think, until this is done, there's not going to be that much interest.

MR. ALEXANDER. Thank you. I have no further questions at this time.

ACTING CHAIRMAN HORN. Commissioner Ruiz.

COMMISSIONER RUIZ. I just have one question to the last speaker.

Is it your experience that pride in origin and pride of self-identity by students encourages them to achieve more in the learning process or to achieve more in doing something constructive?

MR. CARTER. To learn more in the learning—to achieve more in the learning process?

COMMISSIONER RUIZ. Achieve more in learning if they have pride.

MR. CARTER. Certainly.

COMMISSIONER RUIZ. No further questions.

ACTING CHAIRMAN HORN. Commissioner Rankin.

COMMISSIONER RANKIN. I would like to ask Vanessa Brown if the takeover was worth the trouble; was it, do you think?

MISS BROWN. Well, we had a huge community meeting on the night after we evacuated the district office. I guess some county sheriff came in and told us we had to get out when, really, we were—we wanted the people of our own community to know why we took over this building. And people, outsiders, came in telling us to get out. And I think a lot of people of our community found out a lot about what was going on and are aware now and—

COMMISSIONER RANKIN. Why did you use the method? Because you thought it would be effective or because it was the last resort?

MISS BROWN. Well, they said there were other channels we could have gone through. But sometimes, when you tell people of your plans, or something, they'll block you. And I found this, a lot of times, in personal happenings, that if you tell people what you are going to do or tell them about the problems, they don't really listen to your problems. They—like we took over the building, and the people in charge were worried about prosecuting us, and they were worried about their name and not really about helping us with the problems.

COMMISSIONER RANKIN. Would you recommend being obnoxious as a way to get your way?

MISS BROWN. What was that?

COMMISSIONER RANKIN. Oh, I guess I won't ask that question.

But I said, do you think is that a nice way to get your way, to be obnoxious until you get your way? Is that all right?

MISS BROWN. Well—

COMMISSIONER RANKIN. I know I've used it, I'm sorry to say, but I have.

MISS BROWN. It was only just a few's way. It was what all the students felt, you know, that should have been done. And we chose that day because it was the day of the Navajo's Long Walk.

COMMISSIONER RANKIN. Has there been any retaliation against you at all?

ACTING CHAIRMAN HORN. Has the school system tried to impose any sanctions on you for doing this demonstration?

MISS BROWN. Well, as of now, a lot of times, the administrators come up to me and ask for my opinions on things, like, "What should I do in this matter?" Or, you know, like they're afraid if they don't do something right, we'll do the same thing again.

ACTING CHAIRMAN HORN. It's always nice to be listened to. Let me follow up on that just a second. Are you a member of the—well, first, do they have a student government, student council in the Tuba City High School?

MISS BROWN. Yes, they do.

ACTING CHAIRMAN HORN. How many Navajos are on that student government. Is it all Navajo, almost?

MISS BROWN. No. It's mostly half Anglo and half Indian.

ACTING CHAIRMAN HORN. Half and half. Were the issues that your group were interested in raised in the student government before the demonstration?

MISS BROWN. No, they were not.

ACTING CHAIRMAN HORN. Why not? Did you feel nobody would listen in the student government?

MISS BROWN. Well, we felt that if we couldn't get through to the administrator, we couldn't get through to our own student council.

ACTING CHAIRMAN HORN. But you didn't try to get through to your student council?

MISS BROWN. I was on the student council my sophomore year, and from what I've seen in the student council meetings, it wouldn't have worked.

ACTING CHAIRMAN HORN. What do you mean?

MISS BROWN. They just plan, you know, sort of like the olympics and stuff like that, and request forms, you pass those and—

ACTING CHAIRMAN HORN. Do you think they are more interested in sports than they are in the academic program?

MISS BROWN. Well, I've tried to attend student council meetings this year. I've only been to one because, last year, we made it so that the whole student body can attend, if they wish. But this year, they don't really let the whole, you know, student body decide if they want to attend the meeting or not. And when I went there—I don't know, they don't really talk about it too much.

ACTING CHAIRMAN HORN. Have you ever thought of running again for the student council? You are in your senior year now.

MISS BROWN. Well, your class picks you as a representative to be in the student council.

ACTING CHAIRMAN HORN. Apparently you are saying the class hasn't picked representatives that you feel really represent the students? Or is it that you don't represent the students?

MISS BROWN. Well, they could represent the students if there was something to represent them with, you know, but really they just go tell their class, you know, what club request forms were passed, what the school can do, and, you know, like what activities they can do and stuff like that.

ACTING CHAIRMAN HORN. Commissioner Freeman.

COMMISSIONER FREEMAN. Mrs. Thomas, you have been involved in teaching the lower grades as well as teaching in the teachers' crafts. Would you comment on the value of teaching Navajo in the early grades?

MRS. THOMAS. In their own language?

COMMISSIONER FREEMAN. Yes.

MRS. THOMAS. I did say that I was really for bilingual education. If a child came to school at 5 and he had one language and the teacher spoke another language, how is the student going to tell her problem to the teacher? The shy would never get up and say anything. One would just sit there if he's sick in the classroom and never tell the teacher. And once the child finds out the aide talks Navajo, then the child leans toward the aide because the aide and the child understand each other.

And if it is bilingual, we have a bilingual-bicultural class in the third year, and the children are really outspoken. You don't have to say anything to them. They'll just come running up to you and say something. They're happy. School means something to them.

They come to school. There's less absence in that school. And you can teach a concept in Navajo, and I've even witnessed a child working with the Cuisenaire rods and working an algebra problem that long [indicating], and he's, say, 9 years old, and he can come up with the answer.

And the teacher says, "I can't give him anything." So he's too smart.

So I give him this algebra problem.

"Well, what's the answer to that?"

"I don't know. Let him find out."

So he comes to the teacher and tells the answer in Navajo. And so the teacher has to sit down and figure it all out, all the long way, and then say, "Yes, that's correct."

But how he does this, I don't know.

So you can teach a concept that is difficult to teach in the English language to a non-English-speaking, and he'll pick it up faster than in another language.

And then, again, the children appear to be happy. They'll come to school. And in the bilingual class, we have had more parental participation than any other of the classrooms. Parents come to school. They want to help with the butchering of the sheep, or they want to help with the making of the fry bread or the cornbread, or whatever, in the classroom. If there's coyote tales today, okay, there's a parent there.

So the parents will come if the children—you tell the children, "Who has blue cornmeal at home? Who can bring a corncob with blue corn on it?" And they all volunteer. Okay. Who is going to bring the story to this, and they all volunteer. So grandmother comes in to tell the story about the corn, and this is how it works. We have more parental participation in that classroom than any other classroom in the school.

COMMISSIONER FREEMAN. Because of the communication?

MRS. THOMAS. Yes.

COMMISSIONER FREEMAN. Thank you.

ACTING CHAIRMAN HORN. Any further questions? Thank you very much. We have enjoyed having you.

MRS. THOMAS. Before, could I elaborate more on the student requests? I have a followup on what has been done since the student takeover, and I would like for this to go on the record, if you please.

ACTING CHAIRMAN HORN. Could you furnish it for the record for us?

MRS. THOMAS. Yes.

ACTING CHAIRMAN HORN. Have you got it printed there on cards?

MRS. THOMAS. No, I just—they're just little notes that might not mean anything to you but mean something to me.

MR. MUSKRAT. We'll take a statement from you.

ACTING CHAIRMAN HORN. We will take a statement from you, a deposition, and we will introduce it as Exhibit 46, which we will have a reporter take it down from you and introduce it at this part of the record.

MRS. THOMAS. Okay.

ACTING CHAIRMAN HORN. That will be very helpful. Thank you for coming.

[The document referred to, to be marked as Exhibit No. 46 for identification, was received in evidence.]

ACTING CHAIRMAN HORN. Our last panel of the day will be the Tuba City school administration panel; Mr. Outie, Mr. Glotfelty.

[Mr. Frank Glotfelty and Mr. George J. Outie were sworn and testifed as follows.]

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TESTIMONY OF MR. FRANK GLOTFELTY, SUPERINTENDENT OF SCHOOLS, TUBA CITY SCHOOL DISTRICT NO. 15; AND MR. GEORGE J. OUTIE, CLERK, TUBA CITY DISTRICT SCHOOL BOARD

ACTING CHAIRMAN HORN. Please be seated.

Mr. Alexander.

MR. ALEXANDER. Each of you gentlemen, starting with Mr. Outie, state your name and your position with the school board, with the school system, and your address for the record.

MR. OUTIE. My name is George J. Outie, and I am the Clerk of the Tuba City District School Board. My address is Post Office Box 113, Tuba City, Arizona. And I work for the Bureau of Indian Affairs with the department of roads.

MR. ALEXANDER. Mr. Glotfelty.

MR. GLOTFELTY. My name is Frank Glotfelty. I'm the Superintendent of Schools of Tuba City School District No. 15. I live in Tuba City Housing, public school housing, Tuba City, Arizona.

MR. ALEXANDER. Mr. Outie, could you describe for us the composition of the school board? I understand you are Hopi; is that correct?

MR. OUTIE. Yes. I am a Hopi. And I was elected in 1971 and served on the school board the third year. I have 2 more years to go.

We have five on the school board. We have three Navajos—two Navajos, two Anglos, and one Hopi.

MR. ALEXANDER. Could you tell me what the authority of the school board is in relation to hiring, curriculum, policy, and so forth?

MR. OUTIE. The school board is authorized to check over the budget which is submitted by the superintendent. And we also accept recommendations on different policies and it's approved by the school board, and teachers are screened and recommended to the school board and, also, the superintendent is screened and hired by the school board.

MR. ALEXANDER. The superintendent is hired by the school board. Has there ever been a Navajo or Hopi or other Indian superintendent in the Tuba City system?

MR. OUTIE. As long as I've been living there, there has not been.

MR. ALEXANDER. How long has that been?

MR. OUTIE. Oh, that's been 23 years.

MR. ALEXANDER. Twenty-three years.

Mr. Glotfelty, could you describe for us briefly your responsibility as a superintendent?

MR. GLOTFELTY. As the superintendent, my responsibility is to carry out the policies of the board of trustees of the board of education.

MR. ALEXANDER. The panel preceding, Mr. Glotfelty, made several allegations, one of which was that the level of education provided in the school system for Indian students was less than that provided to white students. Would you comment on that, please?

Mr. Glotfelty. The—You are saying that the level of education is less for Indian students?

Mr. Alexander. Correct.

Mr. Glotfelty. I think you are referring to the level achieved.

Mr. Alexander. No. The level of expectation was the question I asked.

Mr. Glotfelty. This is true in some instances, I think you're correct. The reason for this, as has been pointed out by the previous panel also, is a bilingual problem.

Mr. Alexander. You would agree with that?

Mr. Glotfelty. Yes.

Mr. Alexander. The school system expects a lower level of performance from its Indian students?

Mr. Glotfelty. Not all Indian students, but some Indian students. We hope to—

Mr. Alexander. Do you think that's legal?

Mr. Glotfelty. No. We would hope that we could, in a 12-year period of the time, 15-year, 13-year period of time, K through 12, bring as many of these students up to the same level as possible. This is what we attempt to do.

Mr. Alexander. Miss Brown—

Mr. Glotfelty. But we are being very realistic in saying that this is not always achieved.

Mr. Alexander. Miss Brown pointed out, at least by inference and she did at least in private discussions, the substantial dropout problem and that alcoholism was an increasing problem in the high school. Do you correlate this with the bilingual—the lack of bilingual-bicultural programming in your school? Do you think the allegations presented there are legitimate?

Mr. Glotfelty. I don't think there's a correlation between lack of bilingual and bicultural programming and the problem in dropouts and alcoholism.

Mr. Alexander. You do not?

Mr. Glotfelty. No, I don't think there's a correlation there.

Mr. Alexander. Did you hear Mrs. Thomas' testimony that the most active and, apparently, functioning class that she is aware of is the one that is functioning on a bilingual basis that seems to provide a positive ego identification for the students? I assume you heard that.

Mr. Glotfelty. Yes.

Mr. Alexander. But you do not believe that that correlates with future performance in the school system? Is your school system doing studies on this?

Mr. Glotfelty. Yes, we are.

Mr. Alexander. At what stage are they?

Mr. Glotfelty. We are in the—the program that Mrs. Thomas referred to is a bilingual-bicultural program. It began in—this is our third year. It began with the kindergarten program and went to the first grade and, now, the second grade. We are doing a study this year as to the total effectiveness of the program.

We feel that there's a definite need in the kindergarten program, where we have bilingual students, to have a bilingual program continuing there. The thing that we are trying to determine is the length of time that it's necessary to have the bilingual program. You see, in the first year, it was 75 percent Navajo and 25 percent English.

Mr. Alexander. What would be the goal of the bilingual program if you are to—

Mr. Glotfelty. The goal of the bilingual program would be so that children could achieve equally well with other children who could speak English on entering school.

Mr. Alexander. Is it basically to teach Navajo children English so they can function in an English school system?

Mr. Glotfelty. Yes, it is.

Mr. Alexander. That leaves off the bicultural component, I assume.

Mr. Glotfelty. The bicultural component is a separate component.

Mr. Alexander. Are there bicultural programs then on the high school level?

Mr. Glotfelty. Are there bicultural programs? Well, we had—for several years we have had an Indian history program at the high school level. It's been a very popular program, and I would say a majority of our students, both Navajo, Hopi, and Anglo, have taken part in this Indian history program.

Now, this year, we went into a new program at the high school level. We've gone into an amalgamated school. The Bureau of Indian Affairs built a new boarding school at Tuba City, and Tuba City High School district was also funded to build—through Public Law 815 funds—to build additional school facilities. These were set up immediately adjacent to the Gray Hill building. The Gray Hill Boarding School was the school that was built for 1,000 students.

We, a little more than a year ago, went into meetings with the Bureau of Indian Affairs and agreed to have an amalgamated school instead of having two schools adjacent. I'm talking about 200 feet apart. It was either have one school, or two schools with a 20-foot fence, because of the nature of the programs that go on between high schools. When they are immediately adjacent, you can have problems. We felt this would enrich the programs of the community. This was the desire of the local chapter, the Navajo Tribe, and the village of Moencopi.

MR. ALEXANDER. How was it going to enrich the education of the students?

MR. GLOTFELTY. Pardon?

MR. ALEXANDER. How was it going to enrich the education of the students? I'm not sure I follow that.

MR. GLOTFELTY. By enlarging our school program, we could enrich the program that we are giving. Now, we have expanded—

MR. ALEXANDER. By adding the Bureau of Indian Affairs?

MR. GLOTFELTY. Pardon?

MR. ALEXANDER. Does the Bureau of Indian Affairs have many bilingual-bicultural programs?

MR. GLOTFELTY. I'm not completely familiar with the Bureau of Indian Affairs programs. I'm familiar with the public school programs. But we have an enriched curriculum.

I have a copy of an annotated course of study that we have here now at the high school. In addition to the Indian history program, we now have other programs that are offered. Vanessa Brown mentioned one which was in the social studies area. This is an independent study program that will be offered the second semester in Indian culture, both on the Navajo and Hopi level—for the Navajo and Hopi children. It is a project study course, and this would be an independent study.

We also are going to be offering an Indian culture course which will take up the American Indian and his past and contemporary position as a nation in the world.

ACTING CHAIRMAN HORN. Does that just include the public school component? Or does that include the BIA program also?

MR. GLOTFELTY. In this, there's no separation between the two.

ACTING CHAIRMAN HORN. All right.

MR. GLOTFELTY. It's an amalgamated school.

ACTING CHAIRMAN HORN. I would like that added. Would you identify the document. I would like it entered as Exhibit 47.

MR. GLOTFELTY. The document is "Tuba City High School Annotated Course Catalog, 1973-74."

[The document referred to was marked as Exhibit No. 47 for identification and received in evidence.]

MR. ALEXANDER. Mr. Chairman, I have no further questions at this time.

ACTING CHAIRMAN HORN. Commissioner Freeman.

COMMISSIONER FREEMAN. Mr. Glotfelty, how many teachers do you have in the Tuba City school district?

MR. GLOTFELTY. There are about 115.

COMMISSIONER FREEMAN. How many of those—

MR. GLOTFELTY. That's K through 12.

COMMISSIONER FREEMAN. Yes. How many of those teachers speak Navajo or Hopi?

MR. GLOTFELTY. About 22. I don't know the exact number, but I think it's about 22.

COMMISSIONER FREEMAN. Of the student body, that is approximately 70 percent Navajo, 25 percent Hopi. Only 22 percent of the teachers speak Navajo?

MR. GLOTFELTY. Or Hopi.

COMMISSIONER FREEMAN. Or Hopi. Have you heard anything about the Peace Corps program whereby when the United States Government would invite people to join the Peace Corps and go to various countries to teach, their first responsibility is to learn the language of the country and that they are given intensive training?

Would you consider, in your position as superintendent of the Tuba City public schools, with the responsibility of instituting programs to improve the district, of having as a requirement for the teacher, that the teacher would—that the applicants would involve themselves in such a program which would be administered by the school district or the Bureau of Indian Affairs or such other appropriate agency?

MR. GLOTFELTY. To have all teachers be able to learn to speak in Navajo or Hopi?

COMMISSIONER FREEMAN. To have all teachers in a school be able to communicate in the language of the students.

MR. GLOTFELTY. This would be most desirable, but, at the same time, it would be most difficult to achieve.

COMMISSIONER FREEMAN. If it is desirable. I believe in this country we have not said that we would resist doing the difficult. That is how we got the man on the moon, is it not?

MR. GLOTFELTY. Right.

COMMISSIONER FREEMAN. Would you then consider such a program for recommendation to the appropriate officials and seek to implement it, even though it would be difficult?

MR. GLOTFELTY. We have offered a course in Navajo. In fact, Mrs. Thomas was a teacher last winter and made it available to our staff. It's been done in the past. Mrs. Thomas is teaching a course now in Navajo culture.

COMMISSIONER FREEMAN. Well, this does not respond to the concern that I have. And that is that the teachers not be invited to just do this in their spare time, on a voluntary basis, that as a condition of their certification if they are going to teach in these schools, that they be required to learn the languages.

MR. GLOTFELTY. We have not done this as yet.

COMMISSIONER FREEMAN. Would you consider it? You have indicated that this would be desirable.

MR. GLOTFELTY. It would be desirable to have it a requirement. It would be most difficult to have—for one thing, all of our children do not communicate in either Navajo or Hopi even though they are of that Navajo or Hopi tribe.

COMMISSIONER FREEMAN. Has anything that you have heard, during this afternoon and evening, indicated to you any changes that you could make to improve the system?

MR. GLOTFELTY. Well, we are attempting, particularly in the lower grades—kindergarten, first grade—to employ as many teachers as possible that speak the native tongue of the children. Our classes are heterogeneous in nature. So in a class, in kindergarten, you might have 70 percent Navajo, 17 to 20 percent Hopi, and the balance of some other tribe or non-Indian. Now, in these grades, we are attempting to, as much as possible, place Navajo and Hopi teachers. In every instance, we have a Navajo aide who helps these teachers.

We have a program, an ongoing program now, through the Navajo Tribe that sponsored this teaching, taking our Navajo aides and developing them into teachers. This is a 2-year program. It's similar to what was the Teacher Corps, which is related to your Peace Corps and VISTA workers in the past. This is an ongoing program in our school.

COMMISSIONER FREEMAN. Thank you.

ACTING CHAIRMAN HORN. Thank you, Commissioner Freeman.

Commissioner Ruiz? Commissioner Rankin?

COMMISSIONER RANKIN. Just one question, Mr. Glotfelty.

Did the takeover last year result in any constructive changes in the administration, in the curriculum, in the activities of the school?

MR. GLOTFELTY. It firmed up some activities that had already begun. When the students—

COMMISSIONER RANKIN. But they brought it to a head? They brought the—

MR. GLOTFELTY. I think it consummated some of these activities, yes. It happens, unfortunately, that the demands that the students began with, when they were in the office and the board met with them, and said that they wanted to have them presented in a formal meeting.

Then they—as Miss Brown alluded to, there was a public meeting. And this was very good. It was the largest meeting we've ever had that had all of the community involved; Hopi, Navajo, and Anglo communities involved. At that time the demands—they said that these were requests—and then we had a school board meeting and asked that these be presented there, and at that time they said that we had already heard the recommendations.

COMMISSIONER RANKIN. So it wasn't such a bad thing for the students to do after all, then, was it?

MR. GLOTFELTY. That's right. If they had just come and talked to the board, I think that all that they had asked would have been achieved.

COMMISSIONER RANKIN. Thank you.

ACTING CHAIRMAN HORN. Earlier, we had asked Mrs. Thomas to dictate a deposition on the results of the student demonstration at Tuba City as part of Exhibit 46. I have in front of me a very excellent interview report conducted by Jerry Muskrat of our staff with you, and I notice a rather fine statement on pages 10 and 11 of that report as to the specific demonstration requests and what your response was. I would ask the staff to take pages, really 10 and 11 and 12, and to clear it with Mr. Glotfelty, if that represents his views. I would like that added to Exhibit 46, so we have both sides of that picture.

In addition, you were perhaps here when we got some demographic data from the San Juan school district in Utah. I would like as Exhibit 48 to get the same breakdown for students in your school—and the staff can furnish you the categories—as well as for employees. And the staff will follow up with you and that will be Exhibit 48.

[The information referred to, to be marked as Exhibit No. 48 for identification, was received in evidence.]

ACTING CHAIRMAN HORN. Now, let me just ask a question or two.

How is your school system there financed? Do you have a tax base of any sort?

MR. GLOTFELTY. We have a very low tax base.

ACTING CHAIRMAN HORN. You do have some property tax?

MR. GLOTFELTY. Yes. Our assessed evaluation is $1,054,000.

ACTING CHAIRMAN HORN. Yes, and that pays—the money generated by that low assessed evaluation, or maybe it is a high assessed evaluation and a low tax base—generates how much of the revenue of your school budget, roughly?

MR. GLOTFELTY. Oh, less than 10 percent.

ACTING CHAIRMAN HORN. Less than 10 percent. So all the rest is essentially coming from various Federal programs?

MR. GLOTFELTY. Yes. And State.

ACTING CHAIRMAN HORN. And State programs.

MR. GLOTFELTY. Approximately 60 percent comes from the State.

ACTING CHAIRMAN HORN. What interests me here is that as you go around the country—and this has nothing to do with the racial makeup of schools at all, but often the economic wealth of the district—we have found in America over the years a tremendous diversity, partly due, say, to a lack of industrial base in some school districts, as you are familiar with. To what extent has economic development in the Tuba City area been helpful in providing a greater base so that you can, as a result, raise more funds to support the public school system?

MR. GLOTFELTY. It hasn't been helpful in raising greater funds towards the public school system. Tuba City school district is a very small school district, as a district itself. It comprises two-and-a-half townships with an assessed valuation of $1,054,000.

However, we are an island in a district which is called Page school district that extends from the Utah border to the—bordering the Flagstaff school district. We furnish education, however, for a great number of the students in the Page school district. And these come to us on a tuition basis. Under Public Law 874 we have an agreement with the Tuba City—with the Page school district to educate these children.

We also collect Johnson-O'Malley funds for the Page children. And we are attempting—and we hope that the legislature that is now in session may alleviate some of our problems financially. Also, we are working with the Page school district to change our district boundaries so that we can have these children that we are educating in our school belonging in our school district.

The parents find it difficult to understand why they can't vote. For instance, we are having a bond election coming up and children's parents can't vote in the bond election because they do not live in the school district.

Because of this—you mentioned the economic factor. The land dispute has frozen the economy of the Tuba City area since 1965, and the needs—

ACTING CHAIRMAN HORN. Why has it been frozen since 1965?

MR. GLOTFELTY. Because of the land dispute.

ACTING CHAIRMAN HORN. Well, this is the Hopi-Navajo land dispute?

MR. GLOTFELTY. Right.

ACTING CHAIRMAN HORN. And it was frozen by whose action in terms of development?

MR. GLOTFELTY. As I understand it, it is the Commissioner of Indian Affairs. And as a result, practically no new business has come into the community since that time and the communities have almost tripled in size. We have—well, many of the facilities that are needed in the community of this sort: barber shops, beauty parlors, dry cleaning establishments, medical facilities for the non-Indian. We must travel 75 miles any direction to get these.

ACTING CHAIRMAN HORN. So for 8 years, due to a ruling of a Commissioner of Indian Affairs, Tuba City has been in suspended animation, as far as economic development goes?

MR. GLOTFELTY. That's true.

ACTING CHAIRMAN HORN. Which, obviously, since you cannot develop economically, you cannot increase your assessed evaluation. You cannot collect taxes to provide the type of education that the parents in Tuba City one would think would have a right to expect.

MR. GLOTFELTY. That's right. And we are dependent, at the present time, on Public Law 815, receiving funds from HEW. We have just been funded and are going to start building, this winter, a high school. And the application for that high school was started in 1967.

We are building for the needs that were set aside in 1967. The high school has tripled in size since that time. This is true in the elementary school.

ACTING CHAIRMAN HORN. Now, that high school will be, of course, next to the BIA?

MR. GLOTFELTY. Yes. Well, this is where they gave us the land to build on.

ACTING CHAIRMAN HORN. Do you feel it makes sense as an educator to have two schools adjacent to each other with two different principals?

MR. GLOTFELTY. Absolutely—no, it doesn't. It does not make sense. We have one school now we have amalgamated. Unfortunately, we are still with two principals. It's a co-principal situation. It's new to us. We are working and groping with this. It's a very difficult thing.

ACTING CHAIRMAN HORN. Is this if one person vetoes the act of another nothing happens?

MR. GLOTFELTY. We have an agreement with the Bureau of Indian Affairs on this, and it started out with the school, in which they only introduced, from the Bureau of Indian Affairs, freshmen students. They used our curriculum. We are, in our central school, meeting north central and State standards, and they agreed to meet to these standards. So we think we have a good working arrangement.

ACTING CHAIRMAN HORN. You know, during the Constitutional Convention, they thought about two or three presidents of the country, and the Founding Fathers—we didn't have founding mothers there, Commissioner Freeman—but the Founding Fathers thought that one president was a good idea, and there's just a problem of divided authority.

MR. GLOTFELTY. I think eventually one principal will be a good idea.

ACTING CHAIRMAN HORN. Mr. Buggs.

MR. BUGGS. Mr. Glotfelty, of all of the racial groups in the country, who would you say has the best prizefighters?

MR. GLOTFELTY. Of all the racial groups in the country right now? I would say that the Negro group has the best prizefighters at the present time.

MR. BUGGS. And as you look at baseball and basketball and football teams, in terms of their concentration in the population, which group would you say has the most?

MR. GLOTFELTY. Prizefighters or—

MR. BUGGS. No. Football players, baseball, basketball.

MR. GLOTFELTY. The racial group, the Negro.

MR. BUGGS. Why would you say that's true?

MR. GLOTFELTY. I haven't analyzed it. I'll be honest with you. But there is desire among all people to achieve and to, you know, receive recognition and this may be one reason.

MR. BUGGS. There are some people who take the position that black people are just born that way.

MR. GLOTFELTY. I don't take that position.

MR. BUGGS. I'm glad you don't because it seems to me that—the thing that bothers me most about your testimony is the fact that I think the Navajo kids and the Hopi kids will soon discover that a kind of self-fulfilling prophecy is working with respect to what the teachers expect of them.

I think the reason that there are a lot of black people who are good basketball players and football players and prizefighters is not because they are any better than anybody else at it, but because, way back in the early 1900's when before I was born—not in the early 1900's; I was not born—Jack Johnson proved that a black man could be the heavyweight champion of the world.

And I recall that every black kid in my hometown started lacing on gloves. And we didn't say, "We're going to give you an uppercut." We said, "We are going to give you a Jack Johnson."

And as a result of that, black kids all over the country, because their level of expectation had been raised, sort of believed that they couldn't be beat, and they went out and they tried hard.

And the same thing is true in baseball, football, and basketball, and now the same thing is getting to be true in other areas of achievement. Going to college, hundreds of thousands of black kids are going to college now. Ph.D.'s, doctors, lawyers, you name it. They are there.

And it just bothers me that if a superintendent of the school and if teachers in the school admit freely that their level of expectation for any group of kids is low, those kids are going to prove you right. And it seems to me that one of the problems, not just in Tuba City, I suspect, but in all of the communities in this part of the country, is that the level of expectation in what Indian kids can achieve is so low that they will always prove you right.

And I would hope that, in some way, persons like yourself who do have leadership responsibilities will attempt to provide leadership for the teachers, for the parents, for everyone, to raise the level of expectations so that the self-fulfilling prophecy on the part of Indian kids will be much higher than it obviously is now.

MR. GLOTFELTY. We are attempting to do this, really. When I was speaking earlier of the achievement level being lower, the expectation being lower, this has been true in the past. I think we are in a new era and that we are bringing this expectation level higher every year. It should be done immediately, I realize. But it takes time to change staff, too.

MR. BUGGS. Sure does.

ACTING CHAIRMAN HORN. Well, I am sure that you, as an educator, recall that famous study done in south San Francisco where the teacher was told the exact opposite of what student I.Q.'s were. And the teachers were told that, "This was the bright student, and these weren't so bright." It so happens that the researcher had completely reversed the figures just to see the effect.

The result was that, all of a sudden, the people who had the actual so-called measured low I.Q.'s started producing because the teacher had higher expectations, and the teacher assumed that he or she was dealing with brighter students. And I thought that was one of the more significant studies in education that I have seen in the postwar period among a plethora of rather dull studies on education.

But I think the point that Mr. Buggs makes, the point that we made in our Mexican American education study on the interaction between students and teachers in the classroom, in the Southwest, was along the same line.

Are there any further questions?

COMMISSIONER RUIZ. I just have one. I was just listening to the deposition form of testimony by Mrs. Thomas in the next room, and she declared that since the demonstration of the students, there have been many, many improvements which she attributed to an awareness, which the student takeover created in the administrators. Would you, in substance—

ACTING CHAIRMAN HORN. While you were out, we have that as part of Exhibit 46 in terms of the actual response of the administration to each of those items.

COMMISSIONER RUIZ. Very well.

ACTING CHAIRMAN HORN. If that is okay.

COMMISSIONER RUIZ. Then that is going to answer my question?

ACTING CHAIRMAN HORN. Is that your question?

COMMISSIONER RUIZ. Yes.

ACTING CHAIRMAN HORN. Yes. Mr. Glotfelty will review the interview report, which has the specific responses and answers. They are rather long, and he will clear it for the record.

COMMISSIONER RUIZ. Thank you.

ACTING CHAIRMAN HORN. If that is acceptable.

Any further questions?

Well, we thank you very much, gentlemen, for coming. I think it has been a very useful session.

Let me just say as we conclude tonight's meeting at 8:05 p.m., that for the benefit of the audience, tomorrow we will begin at 10:00 o'clock. We will be continuing the presentation of material on the problems of public schools located on the reservation. That will last until 12:15.

After lunch, beginning at 1:30, we will discuss the schools of the Bureau of Indian Affairs. We will then have the Bureau of Indian Affairs area director, Mr. Lincoln, and various education officials of the Navajo Tribe.

Following a short break, as we announced each of these sessions, we will have an open session from 6:00 to 8:00 o'clock, at which any individual is welcome to testify before the Commission, as long as their testimony does not defame or degrade another human being. If you want to talk in generalities about some of these problems, we would be delighted to hear from you.

I would like to read, in conclusion, an interesting note that we have from a member of the audience which says: "To the panel members from a listener: I never thought anybody would listen to actual problems existing with my people. It is good to learn of such a Commission. Thank you for coming."

Well, we are glad to have come. We appreciate your hospitality. As we said at the beginning, many of these problems occur throughout the United States. It would be unfair if we raised false expectations that, because a Federal commission came, these problems will be solved next week, next month, or next year. All I hope is that people of good will and good heart, such as those in this room, can make renewed efforts to solve, jointly, some of these issues.

Until 10:00 tomorrow, the Commission is in recess.

[At 8:07 p.m. the hearing recessed, to reconvene at 10:00 a.m., October 24, 1973.]

WEDNESDAY MORNING SESSION

OCTOBER 24, 1973

ACTING CHAIRMAN HORN. The last day of the hearings of the United States Commission on Civil Rights will now begin.

We will continue our exploration of the problems of the public schools on the reservation. Those sessions will last from 10:00 o'clock to 12:15. At that time, we will take a break for lunch until 1:30, when we will discuss, upon coming back, the problems of the Bureau of Indian Affairs schools which will occupy us until roughly 4:00 o'clock. At 4:15, Mr. Anthony Lincoln, the Bureau of Indian Affairs director, will appear. And at 5:00, officials of the Navajo nation's division of education.

There will then be a half-hour break after which, from 6:00 to 8:00 o'clock, there will be an open session at which any individual who wishes can testify. We will announce procedures before that before the break, and roughly, they will be that those who wish to testify sign up. It will be on a first come, first served basis, with various members of the Office of General Counsel who will be available from 5:30 to 6:00.

At 8:00 o'clock, I will read the closing statement on behalf of the Commission as to some tentative conclusions as a result of these 3 days of hearings.

And now, we will begin with the panel on the Kayenta school system, the community panel. Will Mary Ann Navajo, Frank Donald, Carol Big, and Randolph Smith please come forward and be sworn as witnesses.

[Mrs. Mary Ann Navajo, Mr. Frank M. Donald, Sr., Mrs. Carol Big, and Mr. Randolph Smith were sworn and testified as follows.]

TESTIMONY OF MRS. CAROL BIG, EMPLOYEE, KAYENTA PUBLIC SCHOOLS; MR. FRANK M. DONALD, MEMBER, KAYENTA BOARD OF EDUCATION; MRS. MARY ANN NAVAJO, KAYENTA, ARIZONA, AND MR. RANDOLPH SMITH, STUDENT, MONUMENT VALLEY HIGH SCHOOL

ACTING CHAIRMAN HORN. Please be seated.

Mr. Glick.

MR. GLICK. Thank you, Mr. Chairman.

Could you all please state your name, address, and occupation for the record, beginning with Mrs. Navajo?

MRS. NAVAJO. I am Mary Ann Navajo. I am from Kayenta, Arizona. Presently I am not employed.

MR. DONALD. I am Frank M. Donald, Sr. I'm a Navajo alcoholism rehabilitation educator and program director, Tuba City agency.

MR. GLICK. Mrs. Big.

MRS. BIG. I'm Carol Big. I am from Kayenta, Arizona, and I am employed by the Kayenta Public School, District 27. I am a kitchen manager.

MR. GLICK. Mr. Smith.

MR. SMITH. Randolph Smith, student at Monument Valley High.

MR. GLICK. I would like to begin the questioning with Mr. Donald, please.

Mr. Donald, there was a strike of the classified employees, that is, the nonprofessional employees, at the Kayenta school district in October of 1972. And you were elected to the board of education subsequent to that. Am I correct?

MR. DONALD. That is correct.

MR. GLICK. But you have been, previous to your election to the board of education, interested in school problems, is that correct, too?

MR. DONALD. Would you please state—restate that statement, please.

MR. GLICK. I said, before your election to the board of education of Kayenta school district, you had been interested in problems in the schools?

MR. DONALD. That is correct.

MR. GLICK. Now, when exactly were you elected to the board of education?

MR. DONALD. Would you please restate that statement, please.

MR. GLICK. When were you elected to the board of education?

MR. DONALD. I was elected to the board of education in 1972, in March of '72.

MR. GLICK. Could you tell us what problems you saw in the Kayenta school system, both before and after your election to the board, and what efforts have been made to improve the situation?

MR. DONALD. Prior to my being elected to the board, there were some problems that existed which wasn't to my knowledge at the time, until some individual from this various—this school from that area has come forth to me with the problem, asking me if I could do anything to help to resolve the problem that are now existing in that school.

I told the individual that I would try to help every way I can to resolve the problem. And, at that time, I was doing the job as the counselor in the same position as I am now, but only a counselor. But I was also affiliated, myself, with the community, people in affairs, because I am a father and have several children going to that school.

Due to that fact that I would do everything in my power to—some of the deficiency would be corrected, by going around to the people that are directly involved with that particular school and the community people. So I went on ahead and tried to gather some information in regard to the problem that I was told that are existed at that particular school. So I went on to gather more information by contacting more people, and there was more than 10 people from that very school come forth with the problems that are existed under that former superintendent of that school.

I tried to contact the superintendent, but he has always excuse to be somewhere. And I didn't want to harass anybody, but I wanted to talk to him and try to resolve it from—right from his own office. But this has been ignored.

And instead of going back and forth, I went to talk to more people right in the classroom. And there were teachers of some classroom come forth with the problem. It was really existed. So I just went on and contact other people. By this, I mean professional people such as lawyer and my own community leaders and various other people that are supposedly involved in the school. By doing that I went to contact other people also, trying to resolve the problem by telling them that this has existed in this particular school for so long.

MR. GLICK. Mr. Donald, could I interrupt just a moment to ask you—

MR. DONALD. Yes.

MR. GLICK. When you refer to the "problem," could you tell us what you mean by the "problem" in the school?

MR. DONALD. The problem, by that, I mean there were equipment being misused, school equipment. And there was money—the funding of that school was also misused.

This came to my knowledge when I tried to talk to some of the teachers, but they don't want to come forth and tell me exactly what amount and what that particular money was really for. And I didn't know at the time, too, where it was coming from. Later I found out it was Title—Public Law Title 8910 was the money, and also, other funding that was supposedly for the use of that particular school was being misused in some other way by the administrator of that past superintendent.

And then I went on ahead and tried to do a lot of things on my own. And then, at the same time, trying to contact more people, trying to get these problems—bringing them up to the attention of my local community leader. But nothing was really happening right off the bat, immediately.

But before I go any further or do anything about it at all, I was—you know, the process of doing a lot of things in regards to resolving some of these problems was slow for me and, also, for the other people, due to the fact that these particular people that I made contact with to try to resolve the problem, was they had other jobs to perform, other than what I have brought before them.

So I tried to do a lot of things on my own and tried to get more information, and trying to find out how to go about solving the problem without getting—getting to go higher. And I even tried to contact the Navajo Tribe here in Window Rock.

And the process, at the time, through the educational process was real slow and it wasn't really organized, either, and so was the school that I was in at Kayenta. So I went on ahead and I do everything I can that I know how. And I try to contact the right people that I was thinking that might help me to resolve the problem.

But before I go any further, there were more people from that particular school came forth and wanted drastic step to do something about it. And this was getting a little too far, the way this individual was handling his personnel. As a matter of fact, at that particular school at the particular time, this superintendent had no communication whatsoever within his own school facilities. No personnel relationship was even established. It was very poor. It was unorganized. So this, I tried to bring it up to the various educators within that school. And they all agree with me. So I went on to do a lot more and what I had to before.

MR. GLICK. Mr. Donald, since you have been elected a member of the board of education, what steps have you tried to take on the board to resolve problems in the school, communication and other things? Can you tell us about that, since your election?

MR. DONALD. Since being elected to the board, I tried to build a better communication between our administrator and the school board, ourselves. It was all Navajo since the new election came about in last November of '72.

MR. GLICK. How many members of the board are there?

MR. DONALD. There are only three.

MR. GLICK. And these are all Navajo?

MR. DONALD. These are all Navajo, right. And we still try to come together, but there's other problems still exist which was really not complied with, according to the grievance that was put forth by the individual workers of that particular school. We tried to get together on it, but a lot of things were due to the fact that the funding was the problem.

But later on, we tried to get—our new superintendent came, was chosen at the time, and he took over the school. And we tried to work with him as close as we can and trying to build a better relationship and communication. Some of the deficiencies were immediately corrected, but not all of them. And the new superintendent was in the area, so he could listen to others that was there before him.

So a lot of things was supposed to have been corrected a long time before he came but never was corrected. The school was still in the same situation when he came. Nothing was really happening since the walkout.

But since he came, some of the deficiences were corrected. But, still, we needed some more of this, and we all know that we can't do everything overnight because this has—the damage has been done to the school for many years, and it takes along just about that much time to resolve. Because whenever there's big money involved, it takes a long, long time to resolve some of the problems that existed because of the money.

MR. GLICK. Mr. Donald, could I just interrupt you because there are a couple of questions that I would like to have clarified by Mrs. Big and Mrs. Navajo who were, at the time of the strike that we referred to earlier, both employed by the board of education, by the public school system.

I would like to ask them what were the grievances that the classified personnel were complaining of? Mrs. Navajo, would you want to speak to that first?

Well, let me first establish that you were a teacher's aide, Navajo teacher's aide?

MRS. NAVAJO. Yes, I was a teacher's aide the year before and, also, last year there at the public school. One of the grievances was that—well, the teacher's aide and the cooks and the busdrivers, we complained about low pay, low wages. Fringe benefits, there was none; just for some individuals like, maybe, the busdrivers had just a few annual leave that was earned a month.

MR. GLICK. Mrs. Navajo, were most of the classified employees persons of the Navajo Tribe?

MRS. NAVAJO. Yes, sir, it was.

MR. GLICK. Thank you. Go ahead.

MRS. NAVAJO. And also another one was that we wanted further education for teacher's aides. For the busdrivers, they wanted much of a safer place to work because at that time—I don't know if it's still true presently—at that time, working condition was unsafe for the busdrivers. And for the education portion of it, for the children, it was that many of the children were complaining about some teachers that weren't very interested in children or Navajo children's education. So there was quite a few other complaints that related to one another.

MR. GLICK. Were the teachers, the certified teachers, mostly not Navajo?

MRS. NAVAJO. No—yes, they—well, they were.

MR. GLICK. They were not Navajo?

MRS. NAVAJO. No, they weren't.

And another complaint was, as teacher's aide, we substitute teach. While a teacher was either sick or she was on leave, we would substitute teach, even though we knew that it wasn't safe for us to because if there was such a problem that came up that it would be the aides instead of the teachers. So we did that under the last superintendent's administration.

MR. GLICK. Mrs. Big, would you care to add something to the issue of what the strike was about?

MRS. BIG. Yes, sir. At the time, I had been employed with the school for the past 6 years, and I didn't apply for the job to work there. I was appointed. I was chosen by the school board to come to work in that position. So I accepted because I never know how to ask for a job. Wherever I worked, I was hired. And to my ability, I accepted and I enjoy working there.

MR. GLICK. Are most of the kitchen workers Navajos?

MRS. BIG. All the ladies that I work are Navajo. And a lot of ladies that I work for have a large family. And when I first came to work, there was about 700 students there and there were only four of us. That means that we were understaffed.

I wasn't a head cook at the time. I was being trained to become one. And I have mentioned to my supervisor that we are understaffed; if our students would get the quantity of the food, that we should get some extra help because when the childrens are not eating a balanced meal, they are not getting an education.

MR. GLICK. Do many of the children depend upon the food that they get in school for—

MRS. BIG. Sure, because these little childrens are coming out from about 50 miles, around that area, and anybody cannot eat breakfast that early. Probably they arise around about 5:00 o'clock, probably half asleep on the way to school, and those childrens are needed to be fed well-balanced meals.

And so when you are preparing meals, when you are understaffed, you are just rushing. You just grab this and that. And that was our complaint. And we didn't have a very good equipment. We have—our oven was just, most of the time, smoking. We have a very small places where we have been feeding.

Every year I was there, each year it increased the children. Finally, we went up to 1,350 students to feed, and there were just four of us. And we have talked to our supervisor to get us another help. And she tried. I know she tried. When she came back to us and tell me that she cannot able to get help, she just had tears in her eyes. And she has other job to do. And, yet, she comes and gives us a hand in the kitchen.

MR. GLICK. Mrs. Big, do you have children in the Kayenta school system?

MRS. BIG. I have five children that are going to school in the elementary school.

MR. GLICK. All in Kayenta?

MRS. BIG. All in Kayenta.

MR. GLICK. I believe once, in earlier discussion with you, you said that you had sent some of your children to school in Tucson.

MRS. BIG. I have one child that took summer school last summer, and she has some experience with other kids that she communicates with it, what kind of school they have. Mostly she is very interested in other school, what it really looked like. And these children are from Canada, from all over the United States, and they come to go to school, take their summer school down at Tucson, University of Arizona, with scholarship.

MR. GLICK. Do you think that the education your children get in the Kayenta School is good? Is it good for them?

MRS. BIG. Well, a lot of time, I ask my children if it was good. Well, of course, childrens are not all the same.

I have one very intelligent child, and she thinks what she's getting there is not enough. She would like to learn about her own people. She would like to know where she comes from. She would like to learn how to speak Navajo, her own language. I'm not very—I mean, I didn't have enough education, myself, and yet, my children cannot speak in their own language, but I'm trying very hard to teach them at home.

MR. GLICK. Do they teach them Navajo in school at all?

MRS. BIG. No, they don't, not that I know of.

MR. GLICK. Why do you think it's important that they know Navajo?

MRS. BIG. Because it's their culture. They have—our Navajo children have to learn who they are and they have to be themselves. I think it's very important for our Navajo children to learn their own culture as part of their education. At this point, may I have an interpreter, please.

MR. GLICK. Yes. You can speak in Navajo, and Dr. Billison will interpret it for us in English.

MRS. BIG [translation from Navajo]. I would like to mention earlier Navajo history when our grandparents had been forced to march to Fort Sumner. One of the main results of these encampments was, to some extent, enforcement of losing our culture.

We believe that the education must be such that many of these cultures that have been taken away from us should be, at this time, incorporated in the public schools such as Kayenta. And we, as Navajo parents, feel that this is a very vital part of the education that should be recognized in various schools, particularly in the study of our own language and, also, the Navajo culture. And we feel that our children need this type of education now.

MR. GLICK. Randolph, you heard the statement that Mrs. Big made. You are a young person in high school. Do you feel the same way, that your Navajo culture and language and history should be taught in school?

MR. SMITH. Yes, sir, I surely do. Like I, myself, can speak a little Navajo and—I don't know. Like we have different clans. Each family of Navajos have different clans which I don't know which one I come from. And some of these, most of us students don't know, which we really should, through our Navajo culture.

And now, myself, I can't talk Navajo that well. I can talk it, you know; but when it comes to harder language, when you go into more basic details of Navajo, I don't know nothing about it.

MR. GLICK. Is there anything taught, any Navajo language taught in the school or Navajo culture, in your high school?

MR. SMITH. No, sir. Nothing.

MR. GLICK. Have you or any of the other students requested that it be?

MR. SMITH. No.

MR. GLICK. You have not asked the new superintendent for some classes in Navajo culture, in history?

MR. SMITH. I remember that our superintendent now, there's just—they said—a classmate of mine, Jack Smith, he came with me to talk to Mr. Severtson. We talked to him about some of that, but I don't know if he did anything about it.

MR. GLICK. How did he respond to your discussion?

MR. SMITH. After we gave him the question, he just sat there looking at us and—I really don't know, because this was last year. He didn't mention anything, I don't think, nothing.

MR. GLICK. But there has been no change; there has not been—

MR. SMITH. No change.

MR. GLICK.—anything brought into this school?

MR. SMITH. No, sir. None.

MR. GLICK. Now, I would just like to ask one more question, and that is that, after the strike of the classified employees, were there any significant changes made in the school, in the system of relationship between the administration and the classified employees?

Mrs. Navajo, do you want to respond to that?

MRS. NAVAJO. It took a long time. The strike was in October, in October the 8th, and during that time, we—before that time, we tried talking to the school board members, which was all Anglos. And they didn't do very much about our complaints.

So then we submitted our complaints to the chapter. Then they wrote out a resolution that we remove some five people, including the superintendent. And that Sunday, they were released, the five people, by the people's vote. The chapter people had recommended that they be released from their position, so they were.

It took awhile for the new school board member to be replaced. They are all Navajos. At first, we just had two—oh, I take that back. There was one Navajo that was on the school board, too, and two Anglos. We had three. But before, we made out our petition asking for five board—five school board members, and it was turned down by either the county office or the superintendent there. So we never got anywhere with that.

So then, after the strike, all this went on by releasing five people, and the relationship between some of our Anglo community people—well, a few Navajos and the administration was very, very poor because there was different rumors being spread by other people which were involved that didn't know too much about our problem at the time. So it took a long time for it to—for us to get acquainted with the administration again, which is the new superintendent.

After the new superintendent was hired, that was in February, I believe, the community people—before that time, the community people had recommended to the school board that that school hires Navajo administration, administrator, so there can be better understanding and better relationship between the public school and the community people there because the community people felt it was very important that they get somebody that spoke their language, and that they felt free to talk to, and that they would go to them and, instead of getting an interpreter, that they would go ahead and talk their own language and try and resolve a lot of the problems that were existing at the time.

But the school board members didn't obey the community people's recommendation. Instead, they recommended the new superintendent; he is Anglo. But there were other applications by some Navajo people who were interested.

So, just like I said, it took awhile for the people, Navajos. There were some 90 of us that were working there with the school who were Navajos, and we kind of had a hard time because we were criticized against by our Anglo teachers there and some of our own Navajo people. Of course, there was just a few of them.

And due to the fact that I don't know how much of it now has been—has been accomplished, it's because I am not working with the school any more. I felt that if I, maybe, belonged—well, if I was with the community people, I would be maybe considered more of a parent and a community person because one of the acting superintendents after the superintendent left last October, I was informed that I wasn't a community person, that my suggestions and what I tried to suggest to the school or school board members didn't make any difference.

I guess it doesn't hold true any more. Still, I get some calls. I got two calls just last week saying that the administration has recommended they have a teachers' meeting or some sort and I was—some officials have, or some personnels have, requested that I talk to the students or the parents. And two people have said, "No," that I was a troublemaker. So I don't know.

No matter where you are, where you stand, and if you feel that you are a parent and that you feel you don't belong in that position, that maybe you have more power elsewhere, still, that school considers you nothing. I have three children there. My oldest boy is in the fourth grade.

And just because of the strike last year—it wasn't my idea. I guess I'm just the type of a person who's outspoken, that just goes through with, you know, whatever I say. And the girls were very upset and the busdrivers and I felt sorry for them. And the cooks and the janitors, a lot of them had worked there many years under the same salary with very little fringe benefits. And so I guess just according to that, I felt sorry for them, and so I invited some people in trying to helping them. And if you do these kind of assistances for your own people, you're considered as a troublemaker.

And I feel that I have every right to speak, because—every right to speak in that community, particularly, because I was born and raised there and went to school there. And I have never left that community there ever since I got married, and I've been living there for the last 13 years.

And so if the present administrator feels, and the school board feels—and they are both Navajo and both of those men are not from there, they are not from that community—why should they talk about me the way they talk about—they could talk about somebody else like that? But why me? Because I was born and brought up in that community, and I feel that that's my home.

MR. GLICK. Thank you, Mrs. Navajo.

Mr. Donald, I just would like to correct the record, if I could. When did you say you were elected to the board of education?

MR. DONALD. March of 1972.

MR. GLICK. 1972 or '73?

MR. DONALD. Oh, '73.

MR. GLICK. 1973?

MR. DONALD. Yes.

MR. GLICK. Thank you. Mr. Chairman, I have no other questions of this panel.

ACTING CHAIRMAN HORN. Commissioner Rankin.

COMMISSIONER RANKIN. Mrs. Navajo, I was reading some current comments on the strike that appeared at the time the strike took place, and they said the given reasons for the strike was: better pay, fringe benefits, pay for overtime work, but the real purpose was to get rid of the administration. Would you go along with that, or would you differ with that statement?

MRS. NAVAJO. Well, that I go along with on both sides because at the time of the walkout, we felt that we, as Navajos, have tried to get better pay for the employees over there. People asked for overtime and they were turned down. So why should the present administration stay when he can't do anything about it when it was brought to his attention beforehand.

So we felt that the only way we could probably resolve a lot of the problem was to get rid of the present administration and go from there. With the new administration, we figured, he would probably consider a lot of our overtime and things like this because, at that time, the present administration would not consider our overtime, even though it was 2 hours overtime, it was all donated.

COMMISSIONER RANKIN. Mrs. Big, I have been wanting to ask this question of other school districts and school boards. Is there any provision for adult education in the Kayenta school system? For the teaching of adults, is there any program?

MRS. BIG. Yes. They have night classes there for adults.

COMMISSIONER RANKIN. Well, do adults make use of it? Or do very few attend or is it a very strong program in our school?

MRS. BIG. No, I don't think it's a very strong program.

COMMISSIONER RANKIN. It could be strengthened in your mind, could it? Are adults willing to go to school? Or is it the fact that the program is not good, that's the reason why it's not a strong program?

MRS. BIG. I really cannot make a comment on that—

COMMISSIONER RANKIN. Well, Mrs. Navajo wants to comment.

MRS. NAVAJO. Sir, can I answer that? Being with the community at least 4 years, I think I can probably answer that question.

Due to the fact that we do have adult education—that was last year. I don't know about this year—but a lot of our people that are interested in education live out in the—you know, quite a ways from town, and so they have to attend to their stock or children, nobody to babysit for them and things. So they cannot make it in the evenings. So I've tried talking with some other people in the possibility of having it in the day rather than at night because it is especially hard for them to get away from home in the wintertime.

COMMISSIONER RANKIN. So we could have a stronger and better adult education program, is that correct?

MRS. NAVAJO. Yes, sir, if it was encouraged.

COMMISSIONER RANKIN. And you would favor it, would you?

MRS. NAVAJO. Yes, sir, I would.

COMMISSIONER RANKIN. Mr. Donald, one question to you. Is the failure of community-school relations due to language difficulties or the failure of the school administration to interest the community in the school program, in the school work?

MR. DONALD. The language difficulty, I don't think we have any difficulty in regards to the language. I think it is just completely administration.

COMMISSIONER RANKIN. Thank you.

ACTING CHAIRMAN HORN. Could I just ask Mrs. Navajo, following up on Commissioner Rankin's comment on adult education. Do you feel, since individuals are so far away from the school, adults working, that it would make any sense if, say, they rode the buses with the children to school and also went to school during the day? Would there be any interest in that?

MRS. NAVAJO. That sounds like a good idea. Nobody has ever suggested that. But if it was only suggested—you know, I mean, if it was only planned out, I think the children could even be of interest of their parents being there. And, also, the parents can, you know, look into the children's education to see what they are doing and they can learn more about their children's education and what they do.

There's a lot of lack of information, lack of understanding the school, what that school is really there for. Even the teachers. The reason why I say "even the teachers," is because it's just like I was saying this morning; at least our Navajo children make every effort and our Navajo parents make every effort to get up early in the morning, no matter how cold it is, no matter how far it is they have to walk to catch the bus, they still make that effort to get up, meet the bus, get on the bus, and they send their children off to school.

But when they get to school, what discipline or what kind of—actually, what I am trying to say is the teachers or the superintendent or the principal has the responsibility of telling the children, you know, that education is important. They control the children there while they are on the school campus. But if this is not done, and if the children are just released into the campus and then they are going back at maybe 3:30, just to catch the 4:00 o'clock bus, it's something else.

ACTING CHAIRMAN HORN. Thank you. Commissioner Freeman.

COMMISSIONER FREEMAN. I have no questions.

ACTING CHAIRMAN HORN. Commissioner Ruiz.

COMMISSIONER RUIZ. As I understood, Mrs. Navajo, you were identified and considered as a troublemaker?

MRS. NAVAJO. Yes, sir.

COMMISSIONER RUIZ. Did I hear correctly, when one of the prior witnesses testified, that a chapter resolution was passed upon petition of these persons that were aggrieved earlier in the game there? Someone mentioned that a chapter resolution had been passed, setting forth a petition that some of these problems be taken care of.

MRS. NAVAJO. That petition that I was talking about, sir, was that the superintendent being—or was it that you heard someone else say it over here? But I think I was the one—

COMMISSIONER RUIZ. I think it was Mrs. Big.

ACTING CHAIRMAN HORN. Was that the petition where the group asked to have the board changed? Is that what we are talking about?

COMMISSIONER RUIZ. Yes. There was some resolution asked of the chapter and, as I understood the testimony, a resolution was in fact passed by virtue of the fact that the regular procedure was gone through in that particular instance. I was wondering how, otherwise, a person could say that an identified person was a troublemaker if you went through established procedure.

MRS. NAVAJO. Sir, I think you misunderstood.

There was two resolutions I talked about. The first resolution I talked about was where the chapter wrote out a resolution that they recommend—well, they recommended to the school board on removal of the five people that were released last October.

COMMISSIONER RUIZ. That is what I understood. Then for that, you were considered a troublemaker?

MRS. NAVAJO. Yes.

COMMISSIONER RUIZ. Because you participated—

MRS. NAVAJO. Yes.

COMMISSIONER RUIZ.—as a part of a regular established procedure?

MRS. NAVAJO. Yes, sir.

COMMISSIONER RUIZ. Thank you.

ACTING CHAIRMAN HORN. Let me just say, as a born troublemaker, I find, even though I go through a regular procedure, people call me a troublemaker. So you can't help what people call you.

MRS. NAVAJO. That's what I meant.

ACTING CHAIRMAN HORN. Mr. Buggs, any questions?

MR. BUGGS. No questions.

ACTING CHAIRMAN HORN. Mr. Glick, any further questions?

MR. GLICK. No I have no questions.

ACTING CHAIRMAN HORN. Well, we appreciate very much all of you coming here. I think this grassroots type of testimony is what always impresses the Commission as they go around the country. You are obviously parents and workers deeply interested in your children, your people, and your schools, and we commend you for that interest. Thank you for coming.

MR. DONALD. Thank you.

ACTING CHAIRMAN HORN. Will the next panel, the Kayenta school system administration, Mr. Frank Isaac, Mr. Kern Severtson, please come forward.

[Mr. Frank Isaac, Sr., and Mr. Kern Severtson were sworn and testified as follows.]

TESTIMONY OF MR. FRANK ISAAC, CHAIRMAN, KAYENTA SCHOOL BOARD, DISTRICT 27, AND MR. KERN SEVERTSON, SUPERINTENDENT, KAYENTA SCHOOL DISTRICT 27

ACTING CHAIRMAN HORN. Please be seated.

Mr. Glick.

MR. GLICK. Gentlemen, will you please identify yourself for the record by stating your name, address, and occupation.

Mr. Isaac.

MR. ISAAC. My name is Frank Isaac, Sr., and I am a resident of the Cow Springs area, Arizona. And I am presently the chairman of the Kayenta School Board District 27. My occupation is with the Peabody Coal Company as equipment operator.

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MR. GLICK. Mr. Severtson.

MR. SEVERTSON. I am Kern Severtson, Superintendent of Schools at Elementary District 27 and Monument Valley High School, District 27 in Kayenta, and reside there.

MR. GLICK. Beginning with Mr. Isaac, you were elected to the board of education right after the strike in October of 1972, and you have heard the testimony relating to the grievances of the striking classified employees. Can you indicate what steps the present board of education, which we understand is three persons, all Navajo, has taken to rectify the grievances of the striking people?

MR. ISAAC. Well, at the time they had a strike, I was working for the Arizona State Employment Service and, of course, the people had been talking about it and wanted to appoint me for the school board. But they decided to walk out, as has been said here.

So the administration controlling—I wasn't in the middle with it, what took place—but after that, I was elected to school board. And yet—so I wasn't going to take the school board 'til I get to the first of January, January the first. But then, evidently, the rest of the school board have left, and only Mr. Redshirt is the former school board—he is a Navajo—and finally, he's the only one up there.

So the school superintendent—I mean, the county superintendent appoint me as, to go ahead and serve for 60 days, which is the —at the time they have the walkout. So I appointed to serve, that's about 40 days, to get the—to January the first. And being there, I stayed on there, to be a member, permanently, to be a member of the board. Before, I just had appointed to serve Mr. Lee A. Bradley, Jr.'s, place.

MR. GLICK. After you were elected—or appointed and elected to the board of education, it was necessary to choose a new superintendent of schools since the previous superintendent was dismissed. How did the board of education go about finding a new superintendent?

MR. ISAAC. We had a new—we had an acting superintendent at the time, Mr. Melvin Burrell, who was acting as superintendent. And we sent out quite a few letters off to different place, and announced that we had an opening for the school principal—not principal, superintendent, excuse me.

So we've been discussing between Mr. Redshirt and myself—there was only two of us on the board member—and also Mr. Burrell. And so we got some applications. We have some local people put in applications there and they want to be—take up at the school superintendent there, which some are non-Indian. And so—and then we had some more other non-Indians submit their applications which they'd been there before.

MR. GLICK. Were there any Indian applications, applicants?

MR. ISAAC. We have two Indian applications and they both were still in school then. So we talked to George Lee—he's a Navajo—and he was still in school in Utah, and he was interested. And then we talked to him about it. And, well, he was going to let us know as soon as he was decided he was going to take it. And then we talked to Robert Norris, Dr. Norris, and he's also still attending school.

And so we told them we've got to have somebody right away, immediately, because we can't wait until after the school's out, we've got to elect something. The school budget have to be worked out, and this was pretty close to March. March is the day, the deadline for—they had to resubmit this order, the school administration money, or something like that, to upgrade for the following year. And we can't wait for July or August. So we'll be too late. We don't have any money to operate the schools. We've got to have somebody.

So this is—and then Mr. Redshirt and I, well, we interviewed the applications and we talked to some people about it, and so—and then, in my personal opinion and experience, that some people was there before, you know, as the, either as the principal or the teachers, and we'd like to have them serve as the superintendent.

But the feeling that I have is the condition that we're in on it is, you know, the walkout. We've got to have somebody who has a good background and good experience who can handle it. And somebody just out of the school, a lot of time he can't handle it, maybe, or somebody that's been there before and being known there before, and he left there a good cause. Maybe he had some trouble there and left there because. I wasn't considered there to accept that applications.

MR. GLICK. I would like to ask, Mr. Isaac—with no disrespect to Mr. Severtson—do you think it would be a good idea to have a Navajo superintendent of schools?

MR. ISAAC. Yes. So then—and then we find out that Mr. Severtson has some experience with the problem existed before somewhere else. And we thought he might be the good man to solve our problem. And after that, after solve the problem, and then we're going to go forward to a Navajo or Indian, or whatever it is, to be—looking on to be the superintendent.

MR. GLICK. Why would you think it would be a good idea to have a Navajo superintendent?

MR. ISAAC. What did you say?

MR. GLICK. Why do you think it would be a good idea to have a Navajo superintendent?

MR. ISAAC. Well, we have about 90—about 90 percent of the Navajos are students in the Monument Valley High School. And then, that way, when you have the Navajo superintendent, you can—anybody can go in without an interpreter, and someone, the family, or they come up and want to know something about the school and this and that, they just go right and discuss with them whatever the problem they wanted solving or whatever they want or something like this concerning the administration or the school.

Mr. GLICK. Do many of the community people attend school board meetings?

Mr. ISAAC. Yes.

Mr. GLICK. And is there participation by community members at the school board meetings?

Mr. ISAAC. Well, we thought we just open the door for anyone attending the meetings.

Mr. GLICK. And can anyone speak at that meeting, raise issues?

Mr. ISAAC. Yes. Yes.

Mr. GLICK. I see. Thank you.

Mr. ISAAC. We have two ways of a channel, sir. We have one, what we call, is the executive session, which is we cannot talk to somebody their problem in front of them, so we have to get executive session with them.

And then some of them refuse the executive session. We got to hear public, you know. This is the thing. If you name someone in one room, then they will never get out. So this is the thing that's the bad medicines. So we don't want to go that route.

So if we have something real good about the administration, this and that, we tell everybody right there. And, of course, as far as I know, and up to date nobody has said anything about—unsatisfied with what we do now.

And presently, we have some Indian—we have some cultures, the school there— I mean, attending, learning about the culture, what Mrs. Navajo mentioned,—I mean Mrs. Big mentioned about they would like to learn about more Navajos. So we approach that.

And ever since I've been on the board, and I really for it. Way back, I went to school as adult vocational trade, or something like that, the same procedures. And so, to turn right around, I think they used to call it vocational school. So we have a turnout that way.

I really like to see it run that way because the kids, when they get out of the high school, they don't know anything when you put in an application. And we have a job here ready, you see. And then we're trying to set up the boy or girl up there, and they say, "Well, I don't have that experience. I don't have the job experience." This is the type of reason why. But now, presently, we have some construction trades and welding and mechanics and a little bit of cultures, and also, the—also, agriculture. These trades are activities in our school.

Mr. GLICK. Thank you, Mr. Isaac.

Mr. Severtson, how many schools are there in the Kayenta school system?

MR. SEVERTSON. There are two, an elementary school and a high school.

MR. GLICK. Do the children attending the schools frequently have long bus trips, long transportation?

MR. SEVERTSON. Yes, sir. Our longest bus route is somewhere in the neighborhood of 85 to 90 miles up in the Shonto and Inscription House area. These youngsters ride a long ways to school, both in the morning and the evening.

MR. GLICK. And what percentage of the students— Well, first, how many students are there altogether in the two schools?

MR. SEVERTSON. About 1,500 to 1,600.

MR. GLICK. And what percentage of those are Navajo?

MR. SEVERTSON. Approximately 90 percent.

MR. GLICK. And the others are other Indians or Anglo?

MR. SEVERTSON. Anglo.

MR. GLICK. What is the chief source of funding for the Kayenta school system?

MR. SEVERTSON. It would be, I think, Federal and State funds and, secondly, private industry; taxing.

MR. GLICK. There is some tax?

MR. SEVERTSON. Yes. Property tax.

MR. GLICK. We understand from previous testimony, at least it has been suggested, that there are Navajo language or history and culture courses in the high school. Is that correct?

MR. SEVERTSON. Not entirely. There is no Navajo language course, per se, offered in the high school. We have made an attempt this year to teach the Navajo culture and/or history by one of our staff teachers—who is not Navajo, by the way, but has spent considerable time working with the Navajo people, and there's some criticism about this. But we still feel it's better than nothing taught at all. But it's not offered to all students because they obviously can't all go to one teacher.

MR. GLICK. How many professional personnel are there in the school system, teachers and administrators?

MR. SEVERTSON. There are about, between 85 and 90.

MR. GLICK. And how many of those are Navajo?

MR. SEVERTSON. I would imagine six or seven. And then we have other Indian tribes represented in our school district who are certified.

MR. GLICK. Mr. Severtson, I have this sheet which has a breakdown of school personnel which I believe you gave to the staff members—

MR. SEVERTSON. Yes sir.

MR. GLICK.—and you would identify this as arriving from your office?

MR. SEVERTSON. Yes, I would.

Mr. Glick. Mr. Chairman, with your permission, I would introduce this roster of employees of the school system by race and ethnic basis into the record.

Acting Chairman Horn. May I suggest, to keep comparability, if you don't mind, Superintendent Severtson, to also supply besides this employment data a profile broken down by ethnic category, the student profile broken down by ethnic category, and counsel will assure that we have comparability of data between the various school districts.

This will be Exhibit 49.

[The document referred to was marked as Exhibit No. 49 for identification and received in evidence.]

Mr. Glick. Mr. Severtson, one of the issues which has been raised is the lack of communication between the school administration and the community. There may be many reasons for that. Can you give an idea of what your estimation of that is and, if so, whether you have taken any measures to correct it?

Mr. Severtson. Yes, sir. I feel that prior to my coming there was definitely a breakdown in communications between the administration, staff, and community However, since coming to Kayenta, I have tried to correct this by having an open-door policy to my office to any and all persons both employed in the district and citizens.

I have also issued a newsletter from the school district called, "Take Me Home." It is given to the youngest child in each family every Friday which contains such things as lunch menus, calendar for the following week, special events that occur in the school, and sometimes a message from me or the school board.

Mr. Glick. Is this given in Navajo? I mean is it written in Navajo?

Mr. Severtson. No, sir. This is written in English. Many of our Navajo people do not read Navajo, and this is a problem because I wanted to see if I could put it in Navajo and I was advised not to do so.

To the younger students, this is read by their teachers so that they can explain it to their parents when they go home, if they don't have older youngsters.

Within the school employ, I have a superintendent's newsletter which goes out the first of the week, usually on Monday, indicating what is happening that week, what has taken place in board meetings and other kinds of information which is pertinent to our employee staff.

Mr. Glick. I would imagine that communication between the administration and parents is not helped by the great distance that some of the families live from the schools. Would you have any ideas on any way of overcoming that problem of distance?

Mr. Severtson. Yes, sir. I believe that here on the reservation, or in any area of the country where distance is such a factor, I think we are going to have to think much differently than we have ever thought before in educational ranks.

I think that there are a couple of ways that we can alleviate this distance problem. And one of these ways would be through thinking about air travel, such as helicopters, this kind of thing, and fixed-wing aircraft to fly these distances back and forth, rather than riding school buses, four-wheel vehicles on land, for 4 or 5 hours a day. We have presented this idea to members of the legislative body from the State of Arizona in Washington, and we have been met with some listening considerations.

I think, further, we are going to have to think about rather than one large school, as we have now in one central area, we may have to go to the smaller schools around the area so that our younger students don't have to ride so far and so long and become so tired.

Those are some of the things that we can do to alleviate this distance and time problem.

MR. GLICK. Do you think those ideas, if implemented, would help to eliminate boarding schools?

MR. SEVERTSON. I think it very definitely could, because the younger students could—at least they could for the younger students. If we had the small schools out in the areas, you may have to still have boarding schools for the high school students, particularly if you had a 12-month school year and perhaps an extended time like this or extended day, would have to remain there unless you had a large enough, I should say, air fleet instead of school bus fleet to transport them, which I think is and should be considered.

MR. GLICK. Do you think that is economically feasible?

MR. SEVERTSON. It's very difficult to measure a person's wellbeing in his educational sense in terms of dollars. I know we have to look at it, but it's very difficult. I think it could be done, yes.

MR. GLICK. Thank you, Mr. Severtson. I have no further questions, Mr. Chairman.

ACTING CHAIRMAN HORN. Commissioner Freeman.

COMMISSIONER FREEMAN. Mr. Severtson, I would like to pursue a question that I have previously asked about, and this is with respect to the problem of the communication, of the difficulties of the pupils to communicate who do not speak English well in communicating with the teachers. And I note that of the 97 teachers, 8 are Indian. And of those that are non-Indian, will you indicate for me the number that speak Navajo?

MR. SEVERTSON. I would say a maximum of three that could speak well enough to carry on a conversation with the students.

COMMISSIONER FREEMAN. Which means that in the schools, there would be 90 teachers that would not be able to communicate with the pupils to the extent desirable if they are to benefit and obtain an education.

Yesterday, I asked a question of another administrator as to whether, as part of the certification process or maybe not necessarily of the certification process, at least for those teachers that are to be assigned to such a school as this, whether part of the requirement would be that for such teachers, they would, before going on the job, be involved in an intensive language such as the Berlitz Schools do and such as the Peace Corps requires of people who are going to other countries. Would you comment on that, and if you feel that this would be desirable, indicate the extent to which you would be willing to recommend this to the board?

MR. SEVERTSON. I think it would be most helpful, first of all. Secondly, that it would be difficult to implement this, of course, immediately, because of the time lag that it would take.

We are at Kayenta taking steps to do that in-house with our staff now. We are offering a Navajo language course every Friday evening this semester. We have about 30 people enrolled in that. We will offer it again next semester, and we will offer it every semester.

COMMISSIONER FREEMAN. Is this voluntary or is this a condition of employment, the attendance in such courses?

MR. SEVERTSON. This year, it is a voluntary effort because we weren't able to secure this in time to—when the contracts were signed, to let the teachers know that this would be a stipulation within their contract. However, perhaps in the future, we will state this specifically in a contract, that they make provision for this understanding in language and culture which is provided through the school.

COMMISSIONER FREEMAN. One of the other concerns is with the maximum use of the time the pupil is going to be away from home in transit—the time that the pupil is on the bus—and we were reading, I think a few days ago, about a school district that makes use of television and educational TV.

Now, I anticipate that you may have problems there with respect to the budget. But in lieu of providing for educational television on the budget, could you not consider the use of some of the teachers on the bus or some of the teachers' aides to provide certain kinds of learning that the children could have while they are on the bus for this 2- or 3- or 4-hour ride?

MR. SEVERTSON. Yes, we could. And some of our buses are equipped with intercom system. Some are not. And these would be very noisy and very difficult to do. But in those in which there are sound systems, we have considered and are considering the use of television within the bus itself and/or tapes being played or something with an aide or someone to supervise that activity on the bus while the children are traveling.

Commissioner Freeman. Now, the use of tapes is not really a very expensive process, is it?

Mr. Severtson. No, ma'am.

Commissioner Freeman. Is this not something that could be considered immediately while you are waiting on the larger—

Mr. Severtson. It is being.

Commissioner Freeman. I would like to ask you this question, and this was before you became the superintendent, however, but the earlier testimony indicated that one of the problems that was caused by the strike was the poor working conditions for the busdrivers. Are you aware of what those working conditions were? Because I am concerned that if they were poor working conditions for the busdrivers, that perhaps there may have been some poor conditions with respect to the pupils who are riding the bus. Are you aware of the problem?

Mr. Severtson. I am, of course, not aware specifically of the problems that were mentioned because they weren't stated one, two, three. The problems of which I am aware are these in references to the busdrivers' conditions. The buses, first of all, are good. There is not a problem with the buses themselves. After they return from their route, there are poor conditions—there were poor conditions and still are for the busdrivers' place for them to stay after they get in in the morning because there's probably about a 4-hour period after they have washed their buses and done the first echelon maintenance that we have them do on the vehicles, they need a place to stay. We are working on that, and we will have a place provided for them to stay that is comfortable and pleasant.

We are also converting one of our buildings, trying to make the working conditions better for them to wash the buses, to maintain them where it's warm and hard surface floors, and this kind of thing. So we are aware of those conditions and they are being corrected.

Commissioner Freeman. Yes. Well, are you saying that the drivers have nowhere to rest after they have brought the bus back from over this 89-mile point, that for another 4 hours they have no place to rest at this point, and then they take the pupils back and they may be fatigued while they are taking them back?

Mr. Severtson. Well, I wouldn't say they have no place to rest, ma'am, but I would say the place where they have to stay is not adequate.

Commissioner Freeman. So that the condition which you are describing is not potentially bad for the busdriver, but it does have some potential danger for the children who must ride the bus, for their driver who drives the bus back home, is that right?

Mr. Severtson. Well, it could possibly, ma'am, yes.

Commissioner Freeman. Now, with the question that you are working on it, is the board working on it with a sense of urgency?

Mr. Severtson. Oh, yes.

Commissioner Freeman. I raise this because, you know, we have heard some testimony about people who were working on things but they have been working on them for the last year or 2 years, and you understand, of course.

Mr. Severtson. Yes. Let me tell you just in one sentence, 10 words or less, what has been done, to prove that we are working on. The materials, bill of materials, has been taken for the facility and materials are being ordered to make this construction, and this will be done upon the arrival of these materials. And if we must let them to contract, we will do so at that point in time. And so these are the steps that are right now in process.

Commissioner Freeman. And the money has been budgeted?

Mr. Severtson. Oh, yes, ma'am, yes.

Commissioner Freeman. Thank you.

Acting Chairman Horn. Commissioner Ruiz.

Commissioner Ruiz. Yes. They say sometimes that today's dreams are tomorrow's realities. Mrs. Navajo appeared to be very much intrigued about the concept of transportation of a parent along with a child to school so that there would be adult education at the same time.

I am just wondering how you, as an administrator, would consider that concept and point out perhaps the problems that might have to be overcome in order to lead you in that direction—perhaps bilingual educational aides, at the same time, an adult educational component, such as child care while—we have heard about the busdrivers laying around and doing nothing—utilize the time of the parent or civics, eligibility of the parent, based upon the enrollment, actual enrollment of a child in that particular school.

I, too, am intrigued by this, and I was wondering what your thoughts might be as to how that could be further developed.

Mr. Severtson. I think that it's an idea which must be pursued. It's one that we have certainly thought of and considered as a board and talked about it. I think this also is conjunctive to the comment made by Randolph Smith in that the language is not taught, that not enough culture is taught.

If we were to transport parents to school, then I think we could use the parents to help us do this; to teach the language, to help teach the culture, and work them into the educational system in the school which, I think, is very good. And I think perhaps this is the only way we will get it done, for them to teach the culture and the language.

There aren't—we couldn't find any, at least, even Navajo teachers, who felt qualified to teach their language, and even their culture. And we work very hard to find the teachers that we have. We spent many thousands of dollars on phone calls and visits to find the teachers that we did, and we looked hard for them and we will continue to.

Getting back to the original question that you asked, we need to extend and expand our adult education program. This year, we offered, I think 14, 12 or 14 courses, evening classes, for adult education from NAU [Northern Arizona University], Yavapai College, and others in the area.

COMMISSIONER RUIZ. Now, if you have evening classes for adult education, that makes it very difficult because—

MR. SEVERTSON. Yes.

COMMISSIONER RUIZ.—if it is hard to take a 4-hour ride during the day to a distant school, how possibly could you get any of these parents to go to an evening adult education course?

So another question, and then I will let you continue with your thought. In order to get this off the ground, would some sort of a resolution from the Indian community add impetus or do something? A well-written document for purposes of being of assistance to you or those who might be interested in this, would this initiative coming from the Indian community be of some help?

MR. SEVERTSON. Well, I'm sure the interest that they would bear in this in the form of writing would be very helpful. That, however, is really not the problem. It's one of a budgetary concern because, right now, our—we have just enough buses to take care of our students. And to take parents in would mean that we would have to increase the size of our fleet considerably. Hopefully, we would have to increase it considerably. We want to do this, and it is a budgetary concern and not a problem that, you know, we have to sell someone on.

COMMISSIONER RUIZ. If we were to limit ourselves to what the budget said, and immediate budgetary concerns relative to oncoming programs, I think that there would be very little progress because it has a self-contained inhibition.

Irrespective of the budget, which is, of course, the most important thing, I am one of those dreamers and I am still dreaming on this, that—and it struck me and intrigued me as much as it did Mrs. Navajo—the more you ask for and the more you put in the budget as needed, the more inclined you possibly might be to get a little bit more. And I would like to see some leadership exercised along this concept even if it is premature because somebody is going to think much about it, and I think it is a very important one.

MR. SEVERTSON. Well, Mr. Commissioner, let me speak to that just a moment.

We feel that we have taken a giant step last year to do this. We exceeded our 6 percent limitation by nearly $700,000 to do these things for this current year. Next year, I feel, as you, that maybe I'm a bit of a dreamer at times, but I think that you don't get any more than you ask for and, usually, only a small percentage of that. We will increase our budget as much as we are allowed to and—whatever that is—and we will fight for it.

Further, let me state that, within the last 7 months since I have been at Kayenta, I have made, I think, four or five trips to Washington to talk to our State Representatives and Senators about the problems that we have. In doing so, we have been well-received. We have been listened to, and we have received, probably this year, about a million dollars more in Federal funds than we previously have in years past, and we are asking for far more than that.

One of the comments of one of the Senators was, to me, "Well, you may have to take this to a Senate hearing committee." And I said, "Fine, I'll take it to the Senate floor if necessary, but we want this money."

COMMISSIONER RUIZ. Thank you very much.

ACTING CHAIRMAN HORN. Commissioner Rankin.

COMMISSIONER RANKIN. I have been reading about the past history of your school system. Is it 12 months open hunting season on school superintendents at your district?

MR. SEVERTSON. I think it's 15.

COMMISSIONER RANKIN. It is 15 months?

MR. SEVERTSON. Fifteen a year, yes, sir.

[Laughter.]

COMMISSIONER RANKIN. Are you going to change that? How long are you going to stay there?

MR. SEVERTSON. I'd sure like to be able to answer that, to look into a crystal ball. But I want to stay there as long as I am needed by the community and as long as they feel I am, and I feel, as Mr. Isaac has indicated, that the school district does in fact need a superintendent who is Navajo to understand the problems, and we are exploring that possibility right now and we are talking with people.

And I might indicate that even though a person may have a doctorate in, let's say, even in administration, he may not be able to be certificated by the State at this point. And this is part of our problem. And we are working on that and, hopefully, within a short period of time, we will be able to find a Navajo superintendent to fill this seat.

COMMISSIONER RANKIN. Well, I want to commend you for what you have done already in the short time you have been in office.

MR. SEVERTSON. Thank you, sir.

COMMISSIONER RANKIN. I think your moves have been in the right direction.

MR. SEVERTSON. Thank you.

COMMISSIONER RANKIN. And there is no substitute for expertise and ability, I can tell you that much.

Now, the next question that I want to ask. With respect to Navajo language training, at what level is it most suited to put in Navajo language courses? At the elementary school level or at the high school level?

Mr. Severtson. At the elementary school level, at the very youngest age, because a child learns much more easily when he is younger.

Commissioner Rankin. So you would put it in the elementary school?

Mr. Severtson. I would, sir. I would begin it there and continue it through.

Commissioner Rankin. You would not put it in in lieu of English, but both, put both in as language training, is that right?

Mr. Severtson. Oh, yes. Certainly.

Commissioner Rankin. Yes. I think that would be necessary, too.

What about your recruitment of teaching, good teachers? Is it hard to get good teachers? Or are you getting more successful?

Mr. Severtson. I think more successful, sir. This year, we had a total of about 400 applicants for about 35 positions. That's more than the district has had in prior years. And we feel that, out of these, we are able to hire, the majority of them very good.

Commissioner Rankin. Is the salary scale the same in the public schools as in the BIA schools?

Mr. Severtson. No, sir.

Commissioner Rankin. The best pay is in BIA?

Mr. Severtson. Yes, sir.

Commissioner Rankin. Is there any chance of getting your salary level raised to compete with those schools?

Mr. Severtson. Yes, sir. We intend to do that. Last year, the board made a giant step toward helping this. They put in a salary scale which is low at the beginning, but as a teacher progresses through the system it increases very rapidly. And we hope to increase that base to attract new teachers in the ensuing years. And I might, if I could just interject this—

Commissioner Rankin. Sure.

Mr. Severtson.—sidetrack; our classroom teaching aides who work with students 51 percent of the time or more, we have developed a salary scale which is identical in concept to that of our certified staff members, giving an incentive toward more education and more experience and tenure in our district. And they seem to be quite excited about this and feel more professional about it, and, I feel, because of this they will do a better job with the students.

Commissioner Rankin. Fine. Now, I have read also that you prepared a 16-year plan. Am I correct in that?

Mr. Severtson. Yes. We are working on that.

Commissioner Rankin. You presented it to the school board? Have you, or is it to be presented to the school board?

Mr. Severtson. We have presented it, and we're—

Commissioner Rankin. What is the fate of it?

Mr. Severtson. Pardon, sir?

COMMISSIONER RANKIN. What has happened to it?

MR. SEVERTSON. Well, okay, I'll try to get it in 25 words or less because it's hard.

We began talking about it late spring last year, the 16-year plan, in these four phases: Year one, which is the current year, that we plan and get a steering committee in, the kinds of persons from the universities or wherever we need them, and from the tribe, to work with us on planning the next three phases of 5 years each.

Hopefully, that we would accomplish these kinds of things through this: that we would soon have a 12-month school year of a little different nature, which I can't go into at this point, within the first 5 years; and, perhaps in the second 5 years, enter into a fifth-year program which then would mean that a student would have spent 6 years at the high school and received a very fine background and graduate with a saleable skill that he could use at any place. And then the fifteenth, or the third 5-year block of time, would be that of continued change and revamping of the previous 10. And, of course, there would be many changes within that.

One of the things and the ideas and thinking that we have in this, just as an example—and we don't just talk about boys, but both boys and girls—if we had a heavy equipment or truckdriving school there, we think that a field trip with a semitractor across the United States as an examination, maybe a 2- or 3-week period from here to New York City and back. And we have talked with Ringsby, with Time-DC, and some trucklines. They are very enthusiastic about this program.

And we have four other areas that we are going to study and look into in this. And these are the kinds of things that we're looking about, flying and so forth, that look toward tomorrow. We can't do much about yesterday, but we can do something tomorrow.

COMMISSIONER RANKIN. Does any other board, except your own school board, have to approve your plan?

MR. SEVERTSON. Yes, sir. When we go into a 12-month or a fifth-year program, this would have to be approved by the State Department of Education in Arizona.

COMMISSIONER RANKIN. Well, good fortune to you as you continue your plan.

MR. SEVERTSON. Thank you, sir.

MR. ISAAC. May I make a comment, sir.

ACTING CHAIRMAN HORN. Pardon me. Let me ask several questions of Mr. Severtson. Like Commissioner Rankin, I was very impressed, having read the interview report, with your obvious commitment to the Navajo people and also your leadership as an educator. I would like to lay out a few facts on the record, though, just to clarify it in my own mind.

We had a discussion earlier as to the number of teachers who speak Navajo. I believe you mentioned three. I wonder, since it was testified by one of the parents earlier, that many of the parents have difficulty speaking Navajo—and you mentioned the advice you had been given to send "Take Me Home" home in English—do you have an estimate of how many of your students speak Navajo?

MR. SEVERTSON. No, sir, I don't.

ACTING CHAIRMAN HORN. We find, in many communities, Mexican American communities, that many students do not speak either good Spanish or good English. They are caught in this conflict between two worlds and two environments. I just wondered if communication in Navajo is a problem with a number of students, if their parents have difficulty carrying forward the culture and language.

MR. SEVERTSON. Yes, sir. This is true. The comments from many parents who visit my office are like this: that it is even difficult for them to communicate, particularly with their junior high and high school students in Navajo because there is a transfer and a change as they go through school, particularly those that go to BIA schools.

There is a very distinct cultural barrier there as the child gets older and goes into high school between his parents. There's a conflict. This is quite readily apparent if you look at it. And our Title IV project that was just funded this year, $192,000, is called a family guidance project, which puts about eight or nine Indian counselors in the field who will visit homes with their students, with parents, and with the administration, to help bring this distance together, this communications gap which we are experiencing.

ACTING CHAIRMAN HORN. One thought that came to mind as I read the Take Me Homes—and I agree and would urge the involvement of the community and the adults, and I'm sure you would too from your testimony—is perhaps one way to involve the schools closer with the parents is if one page of that had some aspect of Navajo culture each week, either historically or tales and philosophy out of the past. I think that might be one way a school could help reach parents.

Another fact I want to get straight is we've heard a lot of talk about how long the bus rides are. Of your total number of buses how many really do travel 3 or 4 hours? One, or two? What are we really talking about in proportions?

MR. SEVERTSON. I would say about six or seven travel extensive distances: I'll put it that way.

ACTING CHAIRMAN HORN. Which would be at least 2 or 3 hours one way?

MR. SEVERTSON. I would say 2 hours.

ACTING CHAIRMAN HORN. Two hours one way?

MR. SEVERTSON. Maybe not a total—from 1½ to 2½ hours one way, yes.

ACTING CHAIRMAN HORN. And that's six or seven buses out of how many?

MR. SEVERTSON. About 13, 14.

ACTING CHAIRMAN HORN. Roughly half of the buses?

MR. SEVERTSON. Yes.

ACTING CHAIRMAN HORN. Because I think the suggestion Mrs. Freeman and others have made as to use of cassettes, radios, television, but especially cassettes and the radio to get into the home as well as the bus would be most helpful.

Another concern, and I must confess as a university president that this has bothered me for years, and I can't say that I have solved the problem, and I'm not happy with the little I've done on it, but I think I've solved it for the clerical staff, but the big problem is how does one educate the maintenance staff which is in one's jurisdiction?

You and I both preside over educational institutions. Education is occurring all around to individuals, and yet I must say we have got to figure out some way to provide educational opportunity, be it for busdrivers or kitchen help or whoever, while they are in a school environment whether it be 1 hour a day or 2 hours a day. I think this is probably where both private and public education in America have failed.

Well, I'd just like to say in conclusion I am impressed with your testimony. I'm impressed with the interview report. I read his background. I think that the district chose very well when they selected you as superintendent.

Any further questions, Mr. Buggs?

MR. BUGGS. No.

ACTING CHAIRMAN HORN. Mr. Glick?

MR. GLICK. No.

ACTING CHAIRMAN HORN. Thank you very much, gentlemen, for coming.

MR. ISAAC. May I make some comments?

ACTING CHAIRMAN HORN. You have a brief comment you wish to make?

MR. ISAAC. Yes.

The idea of bringing out, as Mrs. Navajo mentioned here, she probably said what I meant to, but ever since I've been on the school board, what Mr. Severtson brings out, this is what I am really for. And I've talked to some other education committees on this in the same line as what Mr. Severtson talked about, and I know Mr. Billison heard me talking about it too.

I just wonder about the parents riding with the buses, what we are suggesting, the board is suggesting, through Mr. Donald and Mr. Red Shirt, and we are discussing it and we are trying to organize family advisory committees. So a family advisory committee will leave out with the bus rides, so they will be coming in with the kids and so the family will learn what the kids do on the bus and also at the same time the kids will learn how to behave with their mothers or parents, or come with the buses. This is my idea and this is number one.

And also my number two is—we're talking about just—Mr. Severtson mentioned about the heavy equipment, the truckdrivers and I have pretty heavy experience on that in which now I am presently employed as equipment operator which I had a good experience when I was in the service. And if we get some equipment we could build a road—the kids could build a road and right now we have some boys at the same line; we have some carpenters and also mechanics. I am for trying to build more buildings at the school which is maybe for shop, something like that. Let the high school student build his building. Let's get the material and get this thing going. I wish this other school could be the same way too.

And then I want to talk about one troublemaker, is my suggestion—and I'll talk to you—we had a few—I have been trying to organize what we would call Navajo and Hopi School Board Association. That way we have all kinds of problems all over our reservation, Navajo Reservation. We have some other tribes that live here too. Yes. The reason, the more problem we got is the hire, and then the—which is the recruitment. We have got one applicant, maybe about a dozen—one applicant. So what I am trying to do, if we organize this association, we may have to put one office in Window Rock. Window Rock can recruit for all the reservations and this can be well known by the teachers, who are good teachers and who is good instructors and who can be all good workers. I think this is a good idea.

And then, I don't know, you may just go ahead and tell me, "You are wrong;" so I'll say, "thank you." Either way I may be wrong and I may be right, but this is my comment, so like Mrs. Navajo say, I'm a troublemaker. I probably am too, but, thank you.

ACTING CHAIRMAN HORN. Well, Mr. Isaac, it's very impressive. I've said for a couple of decades that one of the toughest jobs in America is to be on a school board. You don't get paid for it, you've got to be close to the grassroots and the people if you are really going to do a job, it takes an awful lot of your time and you are obviously a person with a deep commitment, and I commend you for it. I think we need more school board leaders like you. So thank you for joining with us.

MR. ISAAC. Thank you.

ACTING CHAIRMAN HORN. The next panel will come forward. This is the Window Rock school system community panel: Verna Etsitty, Mrs. Slinkey, Frank Carillo, Alberta Tippeconnic, and Darrell Arviso.

[Mr. Darrell Arviso, Mr. Frank Carillo, Miss Verna Etsitty, Mrs. Slinkey, and Mrs. Alberta Tippeconnic were sworn and testifed as follows.]

TESTIMONY OF MR. DARRELL ARVISO, STUDENT SCHOOL BOARD REPRESENTATIVE, WINDOW ROCK HIGH SCHOOL; MR. FRANK CARILLO, STUDENT, WINDOW ROCK HIGH SCHOOL; MISS VERNA ETSITTY, STUDENT, WINDOW ROCK HIGH SCHOOL; MRS. ALBERTA TIPPECONNIC, FORT DEFIANCE, ARIZONA; AND MRS. SLINKEY, WINDOW ROCK, ARIZONA.

ACTING CHAIRMAN HORN. Perhaps, Dr. Billison, you would like to translate that for Mrs. Slinkey. She will, I assume, need the assistance of the translator. I think we ought to just for the record, do you swear and affirm to tell the whole truth within the matters to which you are testifying? Please reaffirm it for Mrs. Slinkey.

[Translation into Navajo.]

ACTING CHAIRMAN HORN. Fine. It's affirmed for the record.

Mr. Glick.

MR. GLICK. Thank you.

To begin with, would you each state your name and your address and your occupation, beginning with Mr. Arviso?

MR. ARVISO. Darrell Arviso, the student school board representative, Window Rock High School.

MRS. TIPPECONNIC. I'm Alberta Tippeconnic. I'm from the Fort Defiance community. I'm a parent.

ACTING CHAIRMAN HORN. Excuse me. We're either going to have to speak closer to the microphone or raise the sound system. We can't hear.

MRS. TIPPECONNIC. Alberta Tippeconnic. I am a community member and a parent.

ACTING CHAIRMAN HORN. Dr. Billison, would you please ask Mrs Slinkey to identify herself?

[Translation into Navajo.]

MRS. SLINKEY [translation from Navajo]. I am a housewife and I have some grandchildren in public school.

MR. GLICK. Mr. Carillo?

MR. CARILLO. Frank Carillo, Box 716, Fort Defiance, Arizona. I'm a student.

MR. GLICK. What school are you a student in, Frank?

MR. CARILLO. Window Rock High School.

MISS ETSITTY. Verna Etsitty, Box 949, Window Rock, Arizona, a student at Window Rock High School.

MR. GLICK. Could you say it again, Verna, we didn't hear?

MISS ETSITTY. Verna Etsitty, Box 949, Window Rock, Arizona, a student at Window Rock High School.

MR. GLICK. Beginning with Verna Etsitty, I'd like to ask you for your description of the situation at the Window Rock High

School last year before the student walkout took place. Tell us why there was a walkout, what happened?

MISS ETSITTY. Well, it started when a petition was going around saying that we wanted— The students wanted an Indian studies program set up and parents and community were involved in this. And then we had presented it to the school board. We had presented this petition to the school board when it met the following Tuesday. And then at that school board meeting there was also an incident which had occurred Friday during a football—an away game, and it was—well, the football team was leaving for an away game and two football players were taken off the bus because their hair was too long, and they had brought this up also.

And we met there at the school board meeting and we discussed this, and at that time Mrs. Marie Lincoln was there and she just cut us off. She said that she had to go home and wouldn't listen to anything we had to say. So the students met in front of the Window Rock, the school, and we said, we wanted the dress code passed, and she just wouldn't listen to us at all and she just—

MR. GLICK. What do you mean by the dress code, Verna?

MISS ETSITTY. Well, the girls had to wear dresses to school on, you know, even during the winter, and we weren't allowed to wear pants at all. And the boys, you know, having long hair and being in the athletics—being an athlete and all they wouldn't—they didn't pass the dress code that night, or anything.

So the following morning, the girls—well, the students that had shown up at the school board meeting, the girls wore pants the next day and the guys, you know, they went along with us. So when we went to school the next day they had told us to get out of our classrooms because we were—you know, we weren't going with the dress code.

So we left the classroom and we gathered—well, some of them had to leave and go to report to the principal's office. They left and during lunch hour we got a little assembly going in front of the high school and we were telling them what had taken place at the school board meeting, and it had run into the educational process and the principal came out and he told us, "I'll give you 5 minutes to get back into class or you are all suspended."

And we said we weren't finished. So we sat out there and we continued and the 5 minutes was up, and he told us to all sign our names on this tablet and to leave campus. And he said at that moment we were all suspended. So we just left campus and we gathered at Fort Defiance Park, and that's our walkout right there.

MR. GLICK. So that's what happened in the demonstration, but what happened after that? Were there changes made in response to the student demands?

MISS ETSITTY. Well, they went ahead and changed our dress code and they told us that we could have an Indian studies program. This is the following, you know—after we had the walkout, we met with the administrators, with the 10-man committee, and we told—We had some demands, and any parents or the community who was involved or, you know, that wanted to get involved, they were allowed to attend this meeting. And while the rest of the students were outside waiting for what we had gotten through, you know, to the administrator. And we had our dress code changed, and they said that we could have our Indian studies program, but we had to work on it ourselves and get our teacher.

And we asked them, since we were all suspended, you know, after we had gone through all of this, if we could—if the students could get back into classes with an excused absence and Mr. Bridges, who was the principal at that time told us that it was all right but he wanted to have a parent— Well, he wanted to talk to individual parents on this, and we didn't think that was right because, you know, we wouldn't know what he was going to tell them all. But we wanted a big group to meet in the auditorium with parents and students and the superintendent and principal.

MR. GLICK. Did any such meeting take place?

MISS ETSITTY. Yes, it did.

MR. GLICK. We'll get back to that.

Dr. Billison, I'd like to ask Mrs. Slinkey some questions. She has said that she has children in the Window Rock schools. I'd like her to tell us whether her children have had any particular special problems in the schools because they are Indian.

[Translation into Navajo.]

MRS. SLINKEY [translation from Navajo]. Yes, last year my daughter, who was a senior, did have a tremendous difficulty because, whether it was on her own accord or—but for some reason she felt that many of the teachers and staff were very indifferent to her. And I also have two grandchildren who are in that school, and they explain to me that they are going through the same difficulty.

It is known to the parents as well as myself that the problem began with a high school football player being taken off the school bus prior to a trip because of long hair, and that seems to be the issue, and to date I don't know whether he was able to go on that trip or played any other games.

The other seems to be that the school administrators and staff requested the students that they dress well because of the extreme cold weather. And because of this, my daughter who was the senior last year, rather than to wear the miniskirt which caused her to get cold in the upper part of the legs—because of this, she and the other girls were requesting that they wear jeans which would be appropriate for this type of weather.

MR. GLICK. Dr. Billison, was there more than that?

DR. BILLISON. She's still talking.

MRS. SLINKEY [translation from Navajo]. On this particular day it was raining and it was very muddy. The girl was brought back by the school transportation. However, she was left about a half mile or a mile away from home because of the mud that the driver was afraid to try to drive the distance to the house and so the girl reported that she was sent home because of wearing jeans on that date.

Following that particular incident my grandchild also returned one day and requested that he does not return to school, and his mother was concerned of this and wanted to know if it was the child's conduct that was causing him not to return to school, and—but the boy agreed that his mother can take him back to school to find out if this teacher actually grabbed him and jerked him around in several instances. And when the mother met with the teacher, this was agreed by the teacher that he did do this to the grandson.

But many incidents of this nature have been reported to the parents, and many parents did not believe this because they felt that the student behavior probably was the cause, but eventually some of the parents returned back to find out these were true. And one of my daughters requested that I do not get after my own daughter because she felt that the school system was actually at fault and that now that the students have risen on their own to try to have some of these corrected, some of the parents felt that they should get themselves involved to see what could be done to resolve some of these complaints.

MR. GLICK. Mrs. Tippeconnic, what do you—how would you describe the general community reaction to the student walkout and disturbance of last year?

MRS. TIPPECONNIC. First of all, before this happened there was a—the people in the community were saying, "Our Indians will probably not do this kind of thing, they aren't this kind of people." So when our Indians did walk out there was a very strong reaction from the community and what resulted was a polarization of the community, a division, and a strong division.

There was uncertainty and a bit of fear about the intention of the students, and there was a tendency to blame parents for not caring—Navajo parents, for not caring about what goes on in the school. The school had become a separate kind of institution apart from the community so that the community and the Navajo parents in the community did not feel a part of the school or did not feel welcome in the school. So there was a tendency on the part of the parents, although they were concerned, not to feel like they could be welcome in the school.

But at this time there was a division in the community. Students and parents and teachers on one side and other parents and community members on another side saying, "What the administration is saying is right because they are the administration." This was the reaction of the community.

MR. GLICK. Did that have some effect on the school board election of last year?

MRS. TIPPECONNIC. Before the walkout I think there were people in the community already very interested in what was happening in the school. There were questions on finances, the way the school was being run. There was concern already on the part of community members and what was happening at the school.

I think what the walkout did was help to bring about a quick change in the school board. It resulted in about a 2- or 3-month period of a change of all our school board members. We had a whole new school board which turned out to be an all-Indian school board.

The reaction on some of the members in the community was that Navajos were not qualified to serve on a school board. Even before they had talked or met the members who were running for the school board, some of us in the community did make opportunities available to the community to come and hear the school—the candidates for the school board give their opinions on all issues. We had a very small turnout. The ones who were complaining the most did not seem to want to come and hear the opinion of the candidates who were running and we did invite all candidates to speak.

MR. GLICK. Mrs. Tippeconnic, as a person active in the community and interested in educational issues, do you favor an all-Navajo school board or control in the schools in which Navajos attend by Navajo?

MRS. TIPPECONNIC. I favor the school board members that are now serving on the school board because at this time they were well qualified. They were all Navajo. I think Navajo people and Indian people can relate to the certain kinds of problems if they are problems. Sometimes they are not. Sometimes the problems that are considered problems by non-Indian people who might be in an administration or serve on a school board is not really a problem to an all-Indian school board.

It is a different way of looking at things. It's probably, you would say, an Indian way of looking at things, but you can relate to what is happening in the homes; you can relate to the thinking of children; you can relate to the thinking of students. In this way, yes, I believe that it is important that we do have our school board all-Indian.

MR. GLICK. Thank you, Mrs. Tippeconnic.

I have many more questions, but in the interest of time I think we ought to pass on, Mr. Chairman, but I would like to point out that there have been a number of references to a football player who was taken off the bus because he had long hair and Frank Carrillo is one of those. I will just point that out.

ACTING CHAIRMAN HORN. Are you playing this year, Frank?

MR. CARRILLO. No, I am not.

ACTING CHAIRMAN HORN. Commissioner Ruiz?

COMMISSIONER RUIZ. With respect to an all-Indian school board relating within the mechanism of the institution itself, have you gotten yet to the position where you have had a feedback from the all-Indian school board to the higher echelons, well say, in Arizona and New Mexico, the BIA, or whatsoever institution above you that is comprised principally of Anglos? Do you think that an all-Navajo school board will now have as much muscle with the so-called higher-ups? I was directing that question to the last witness that spoke.

ACTING CHAIRMAN HORN. Mrs. Tippeconnic.

COMMISSIONER RUIZ. Yes.

ACTING CHAIRMAN HORN. We might want to preface our questions by whom we are directing them to. It would be easier.

MRS. TIPPECONNIC. I think they have had, and I know that they have had a very difficult time working with the county officials and State officials, but I think it is necessary that the county officials and the State officials learn, if they have to learn, how to listen to people who are qualified to speak but who might happen to be Navajo.

COMMISSIONER RUIZ. In other words, this will be an educational process to the other people as well then?

MRS. TIPPECONNIC. Yes, an educational process for State officials and for county officials to know that we are equal in education but also equal and the right to make our own mistakes, the right to make wrong decisions, the right to be average.

COMMISSIONER RUIZ. Thank you.

ACTING CHAIRMAN HORN. Very good.

Commissioner Rankin?

COMMISSIONER RANKIN. Mrs. Tippeconnic, do you think 4 months is long enough time to judge the success of your new board or do you think we ought to extend the period of time for a longer number of days?

MRS. TIPPECONNIC. The education of Navajo people, of Indian people has been a period of, what, 100 years? And we are looking at the system now and it hasn't— There has been something wrong someplace. You are not going to change a system that has been going on for at least 100 years in 1 month, 6 months, or 2 years. There has been too much done, and there is too much to be changed. The people who wanted instant results from a school board who has to contend with 50 to 75 years of mistakes has the same right to take a little longer than 6 months to correct the situation.

COMMISSIONER RANKIN. I agree with you.

Is it easier for the Anglos to get in harmony with a Navajo board than it is for a Navajo student to work with an Anglo board; would you say, or not? Or is that an unfair question?

MRS. TIPPECONNIC. I think that when non-Indian people come here it is very hard for them to come from a dominant society, thinking that their society and their way of life is superior to another way of life. I think it is very hard for them to relate. But it is an educational process for them too.

COMMISSIONER RANKIN. Thank you for your answers.

ACTING CHAIRMAN HORN. Commissioner Freeman?

COMMISSIONER FREEMAN. Mrs. Tippeconnic, I would like to refer to the comment which you made earlier concerning the community and the community's idea, that, "Our Indians will not do this," and pursue that from the standpoint of the community. Who is this community that you are referring to and will you comment on whether that attitude has changed or the possibility for change perhaps? Who are these people? Are they the power structure? And if so, you would say—are they the industry, the businesses, the bankers, or who are they?

MRS. TIPPECONNIC. First of all, there are several groups of people. There are the professional non-Indian people who come to the reservation. This includes the government people, say the Public Health people, the BIA people, the public school people. They are all usually professional people.

COMMISSIONER FREEMAN. They are employees of the Federal Government?

MRS. TIPPECONNIC. And the State government.

There are also groups of people; I suppose you have groups of Navajo people also. You have got the older and younger people and when I say "older," I do not necessarily mean age, I mean the thinking that with the traditional concepts of thinking you have these people. You also have some of the Navajo people who have been educated in BIA schools who were given the impression that everything Indian is not right or is not very good or is inferior.

COMMISSIONER FREEMAN. The brainwashed person?

MRS. TIPPECONNIC. If you'd like.

We have—I can't really say how it was divided but many of the professional non-Indian people were afraid, I suppose, of turning the schools over in their opinion to unqualified people because they are not ready to handle their own school affairs. But I think it will be a very long time before they will realize that their averageness, if it is average, is also a right to everybody who lives here on the reservation. We have very— I am not saying that our school board is average. It is not. It is one of the best qualified school boards in the country if you were to compare.

Would you ask the last half of your question again, please?

COMMISSIONER FREEMAN. Well, the areas in which you consider that maybe there can be change in this attitude to the extent that it will be. I think that perhaps your answer already has indicated to me just what will happen. This Commissioner, who is a black American, has had to encounter all of the problems that you have described, so I think that I have the answer.

COMMISSIONER RUIZ. This Commissioner, who is a Mexican American, likewise has done the same thing.

ACTING CHAIRMAN HORN. I won't say anything for the Irish at this point. Let me ask you, Darrell, you are now president of the student council, how do you feel—how do the students feel about the changes that have occurred?

MR. ARVISO. Well, I took a survey of approximately a third of the students. The majority of those were in favor of having the type of administration and the school board that we have now. Ten percent wanted to wait and see what the administration would do first. Three percent didn't voice an opinion.

Those in favor of the Indian administration that we have now feel that this administration can bridge communication gaps between the students, the faculty, and the administration. Also an Indian administration can identify with the students and their problems of education, thus closing the percentage of students for whom provisions are not made to learn and be on the level of national norm.

Now, what I mean by this is, Mr. Graham, the bilingual, bicultural coordinator at Window Rock, stated that at Window Rock High School only 40 percent of the students in the classroom received or comprehended the material that was given to them and 60 percent of the students were not provided for. They just were sitting there and they couldn't comprehend what was happening.

ACTING CHAIRMAN HORN. And yet they were moved forward each year and eventually graduated?

MR. ARVISO. Right.

ACTING CHAIRMAN HORN. May I say, regretfully, the same has occurred in California high schools where students have been just progressed through and they are illiterate when they graduate. And I suspect it has occurred all over the Nation.

MR. ARVISO Right.

And with regard to the school board, the students feel that the school board has given them new awareness of themselves in several areas. They feel that it has given them more privileges, opportunities to express their opinions, and more responsibilities. However, the students have abused some of these privileges, have not taken the responsibility seriously. This, in turn, creates problems on the campus and around the classroom.

ACTING CHAIRMAN HORN. Good. Well, thank you for that report. It looks like you've kept your ear to the grassroots, as we say, and found out what student opinion is.

Frank, you helped start this whole thing rolling. What have you seen in changes in the past year?

MR. CARILLO. Well, from what happened at the walkout we got a change that we have an Indian studies program and girls don't have to wear pants to school. There's no dress code. But this year the football team voted to have their haircut rule put back in, which they didn't do through no administration steps, and this is why I wasn't playing.

ACTING CHAIRMAN HORN. Are they winning or losing this year? I'm curious.

MR. CARRILLO. Well, they are an all right team.

ACTING CHAIRMAN HORN. I heard testimony yesterday which I can hardly wait to find the behavioral studies that back it up, that there is supposed to be a correlation between short hair and improvement in learning. Something I don't believe, having a son age 13 with hair almost as long as yours; but, you know, I'm curious if there is a correlation between short hair and football victories also. That's something else I don't believe.

Well, any other comments you'd like to make, Frank?

MR. CARILLO. No, except this year, this school year isn't really turning out too good because a lot of students, like Darrell said, were abusing things which they shouldn't. But the reason they are abusing things is there is more vandalism; there's more fights with teachers because I think the students aren't scared now like last year, they were scared. They were scared to do things like this, and now they think that they can do anything now.

ACTING CHAIRMAN HORN. Can't the student leaders get the students to assume some self-responsibility here?

MR. CARRILLO. They have been trying. They've said it within the student council, but nothing has happened.

ACTING CHAIRMAN HORN. I find nothing is more effective as discipline than the so-called peer group, be they faculty members or students or whatever, that impose a little self-discipline on their colleagues because certainly an administration has a very difficult time trying to maintain some order in which learning can take place in any educational institution.

Mr. Buggs, any comments?

MR. BUGGS. No.

ACTING CHAIRMAN HORN. Mr. Glick, any further comments?

MR. GLICK. No, sir, I have none.

ACTING CHAIRMAN HORN. Thank you very much for joining with us. We appreciate the time you have taken. Good luck.

Now, the next panel before lunch will be the Window Rock school system administration, Dr. Ken Ross, Mr. Peterson Zah. Will they please come forward.

[Dr. Kenneth Ross and Mr. Peterson Zah were sworn and testified as follows.]

TESTIMONY OF DR. KENNETH ROSS, SUPERINTENDENT OF SCHOOLS, WINDOW ROCK SCHOOL DISTRICT NO. 8; AND MR. PETERSON ZAH, PRESIDENT, WINDOW ROCK BOARD OF EDUCATION

ACTING CHAIRMAN HORN. Please be seated.

Mr. Glick?

MR. GLICK. Thank you, Mr. Chairman.

For the record, gentlemen, would you please identify yourself by stating your name, address, and occupation?

Mr. Zah?

MR. ZAH. My name is Peterson Zah, address, 306 Window Rock, Arizona.

MR. GLICK. Mr. Zah, are you a member of the Board of Education of Window Rock?

MR. ZAH. I am the school board president.

MR. GLICK. You are president of the school board?

Dr. Ross?

DR. ROSS. Dr. Kenneth Ross, Superintendent of Schools for the Window Rock School District Number 8, and office address, Box 559, Fort Defiance, Arizona. Home address, 1155, Fort Defiance, Arizona.

MR. GLICK. Thank you, Dr. Ross.

Mr. Zah, I understand that you have to leave fairly soon because you have an airplane to get in Gallup, or something like that, so I'll begin questions with you. First, I'd like to ask you why you ran for the board of education last year?

MR. ZAH. Well, I think—you know, I basically made a commitment to run against one of the school board members because I felt that, having been a teacher myself and having taught in the Window Rock School District for about a year and a half, I thought that I could initiate some changes. I was also in sympathy with some of the students when they were trying to demand certain things that they wanted to effect in the school system, and so I think it was those kinds of commitments that I had within myself to make those commitments and run.

And I felt that the administration to some degree was being very unfair to the parents, to the communities, and to the schools because my basic thinking was that school administrators, teachers, and others who are concerned with education are there because of students and, if it was not because of students, we will not all be in the field that we are in today. And so I had that basic belief and that was one of the reasons, or several of the reasons why I ran.

MR. GLICK. When you say that you wanted to see some changes brought about in the school system, could you be more specific on that? What did you want to change?

MR. ZAH. Well, I think Mrs. Tippeconnic, you know, put the issue right where the problem is, that was trying to have us, let's say, undo or uneducate many of the things that have been instilled into our minds for all of these years.

You know, we were trying to get parents to get more involved in the school system. We were trying to tell Navajo parents that they had to take a greater role in trying to shape their kids so that they could be valuable, they could be of an asset to the Navajo nation; and so that, I thought, that that was one of the basic changes that needed to be done.

And the others was that the school system did not have a Native American studies program, Navajo studies program, and I think the students also wanted to have along with the American flag and the Arizona State flag to have the Navajo Nation flag be flown in front of the school building. You know, things like this that the students were demanding and I thought that they were justified in their complaint, and I wanted to support them, and I think those are some of the changes that had to be made at that time which I think this school administration, the new school board members have initiated.

The other thing was the employment. When we first went into the school district, one of the things we wanted to do was unbalance the racial ratio that the school district had. I don't know what the figures were, but the employment in the school district was, you know, almost predominantly Anglos, but yet 93 or 95 percent of the students were Navajo children. And so I felt that it would be best to try and advocate to have more Navajo teachers, Navajo administrators and Indian administrators, and Indian people to work in the school district because who else really understands the basic problems of Indian children other than the parents themselves.

So those were some of the things that I advocated personally, and I think the school board members did the same.

MR. GLICK. Have steps been taken to carry out these changes that you wanted to see made?

MR. ZAH. I think we basically initiated these changes, you know, right away because we felt that it was really needed and that's what the students wanted and that's what the communities wanted. And so as a result we have some changes in the school system; but, like Mrs. Tippeconnic said, it takes time to change something that has been going on for the last 75 years. And along with trying to initiate these changes there are some agonies, there are some problems, and to bring about a social change I think within any given society it is very hard and it's very—it's hard work, and I think we as all-Indian school board members now are dedicated to those changes even though they might mean hard work on our part.

MR. GLICK. Was one of the measures that you took the deliberate search for an Indian school superintendent?

MR. ZAH. That was one of the priorities that we had when we went into the school district was to get an Indian superintendent, Indian administrator, Navajo community workers. I guess what we were really trying to do was bring the school system closer to the chapter people, closer to the Navajo people, so that they would have a role in how their school is being run and being operated. I think we have done that and we have almost all-Indian administration right now.

MR. GLICK. Thank you, Mr. Zah.

Dr. Ross, apparently the administration or the board of education was successful in finding an Indian superintendent, since I understand you yourself are a Sioux and are married to a Navajo lady?

DR. ROSS. Yes, I am.

MR. GLICK. Dr. Ross, could you give us some background about your own previous experience before coming to Window Rock as superintendent?

DR. ROSS. Okay.

Previous to my employment with the Window Rock school district I spent about 7 years with the Bureau of Indian Affairs in the area of guidance and counseling. After leaving the employment with the Bureau of Indian Affairs I spent 3 years as the State director of Indian education for the State of South Dakota, and then in the last 2 years I was on the campus of the University of Minnesota finishing my doctorate.

MR. GLICK. Dr. Ross, what was it that led you to accept the position here at Window Rock? What features made it an attractive situation for you?

DR. ROSS. A number of reasons.

One, being somewhat facetious, the influence of my wife and the family ties and being familiar with the country and somewhat familiar with many of the people and employees in and around the Window Rock area, recognizing somewhat the difficulties that had existed, even though we didn't go into any great detail about specific problems that had occurred. And I think it has always been my philosophy, at least, to be on a more direct basis with students in terms of the firing line, the daily activities in education, where as a professional I might be of little more service than being isolated in some regional office, or something of that nature.

MR. GLICK. As an educator did you see this as an opportunity to bring into the school system an Indian-oriented influence?

DR. ROSS. Definitely.

MR. GLICK. Can I backtrack for just a minute to ask you, do you have statistics on the employment by the board of education of its personnel by race and ethnic background?

DR. ROSS. Yes, I do.

MR. GLICK. Could we have those for the record, Dr. Ross?

ACTING CHAIRMAN HORN. Could we get those plus the student demographic breakdown in the same form as we have for the previous school districts? They will be entered as Exhibit 50.

[The document referred to, to be marked Exhibit No. 50 for identification, was received in evidence.]

MR. GLICK. Dr. Ross, can you tell us about some of the specific problems that you saw here in the Window Rock education system, lack of communication, failure or absence of parent involvement, or what kind of problems did you see existing when you got on the scene?

DR. ROSS. I think basically the areas that I am—more or less observed superficially when I first came on board, one, was the area of bilingual-bicultural studies. I was somewhat aware of it prior to being employed in that a school district with 94.9 percent Indian enrollment did not have a concentrated program in bilingual studies because there is a utilitarian need for the younger elementary student to be able to conceptualize in their own native tongue as well in English, many of the formative concepts that are necessary to develop the educational tools as they progress in life.

Secondly, one area that stuck in my mind was the area of special education in that two main areas: one, that we had apparently in the previous administrations a feeling that, if a district enters into a contract for special education services, then everything will be fine and dandy, not recognizing that the personal commitment of a school district and its employees extend far beyond just the simple contractual arrangement.

And so we have attempted to provide in the fetal stage at this point employees in the area of special education to sit and to assess and to identify many of the students that previously may not have been screened closely enough. I have an assumption that there may be several or a number of Indian students, Navajo students, that have been assigned and labeled as special education students, and yet the basic difficulty is not in the mentality of those individuals but in the bilingual and linguistic area.

The third area, again, was the area of generating community input because, by and large, being with—previously with the Bureau of Indian Affairs, I have recognized that by and large, across the country, Indian people do not as a whole, and more so in other and specific areas, recognize the public school system as being, "the public," where they are a separate public within a public. And as many presenters have indicated, it takes time to reeducate or to change some of the attitudes that have been instilled by the institutions.

I think that primarily those are the three main areas.

MR. GLICK. Thank you, Dr. Ross.

I have no further questions, Mr. Chairman.

ACTING CHAIRMAN HORN. Very well.

Commissioner Rankin?

COMMISSIONER RANKIN. I just have three questions, Dr. Ross. First, have you heard the testimony of the other school superintendents from Kayenta and Tuba City and San Juan?

DR. ROSS. I was here for a part of yesterday afternoon.

COMMISSIONER RANKIN. Do you think you have the same problems they have or are they different?

DR. ROSS. Many of the problems are the same. I think one of the unique characteristics of the Window Rock school district is that we, in comparing our district with, say, Gallup-McKinley County, for example, they have a number of other ethnic minorities within their system whereas comparing us to, say, Kayenta, many of the isolation factors, and the more traditional adherences by the students towards native language and culture are a little bit different.

COMMISSIONER RANKIN. My next question: You changed the curriculum in order to get in language courses in Navajo and some cultural courses. Do you contemplate any other changes in curriculum with respect to other subjects, like math, botany, or anything like that?

DR. ROSS. Yes, we do. At this point in time one of the things that we are attempting to do is to establish, again, with the community and the community concept, the use of computer-assisted instruction in the area of adult basic education, in the areas of remedial math and English, and also in the area for those individuals that are gifted within the system who may have used up or burnt out our curriculum to give them an opportunity on an individualized basis for access to additional educational tools in those areas.

COMMISSIONER RANKIN. As yet do you have an adult educational program?

DR. ROSS. Yes, we do.

COMMISSIONER RANKIN. Did you hear the remarks about a daytime adult education program?

DR. ROSS. Yes. At this point in time we do offer daytime activities for adult education. We also offer seven evening courses in related areas in the adult area. Those are primarily not for college credit.

COMMISSIONER RANKIN. What is the dropout rate in your adult courses? Is it higher than the young students?

DR. ROSS. I haven't been that closely associated with the statistical aspect of our adult program.

COMMISSIONER RANKIN. My last question is this: What has been the acceptance of the Indian administration by the Anglo minority?

DR. ROSS. I think at this point on a social basis we were for the most part welcomed into the community; and, in terms of the

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organizational mechanics of operating the school system, we still have some attitudes that need to be changed or identified in terms of the overall goals and objectives of the school so that, if need be, then those people will not be renewed contracts so that we can get those people that are in accord with the philosophy of the board, the community, and the present administration.

COMMISSIONER RANKIN. Thank you very much. I have been greatly interested in your testimony.

ACTING CHAIRMAN HORN. Commissioner Freeman?

COMMISSIONER FREEMAN. Dr. Ross and Mr. Zah, I also have been very impressed with your description of what you are doing, and I would certainly offer you my commendations and to say to you that changes do not come easy, as you know, and change requires that you hang on in and that there will be some dust that—you know, you are going to stir up dust, you are going to ruffle feathers, and some people are going to begin to attack you that you did not know existed before, but this is the kind of thing that the Navajo nation needs. And I don't have any questions because you've answered mine.

ACTING CHAIRMAN HORN. Commissioner Ruiz?

COMMISSIONER RUIZ. As a superintendent of an all-Indian school board have you encountered resistance from the State educational bureaucrats? I asked the question of Mrs. Alberta Tippeconnic who answered, "We are going to have to educate the Anglo professional managers." That's what I had in mind.

DR. ROSS. Let me respond in this way, that there are some systematic barriers that have been built into the educational structure in Arizona that need review, that are possibly antiquated, that need change. At the present time in the situation that we, as well as many other public school districts on the Navajo Reservation are concerned, is that I believe, if I'm not mistaken, that we are the only elementary school district in the entire State of Arizona which, according to school finance, means considerable amount of money.

We at the present time do not administer or handle our own funds. All of that is done by a county superintendent, and it does entail a number of extra kinds of manpower hours in order to drive 110 or 120 miles down to St. Johns in order to get our teachers authorized or certified by the county superintendent or endorsed by him so that they can teach in the classroom. It also entails every other week an individual to go down and process payroll and a number of other problem areas that if an assessment of the effectiveness of the county superintendency in a system of education in this state could be reviewed—and I have mentioned this on several occasions to Mr. Goldwater's staff, who had visited the school, and a number of other people—kind of a cost effectiveness of the county superintendency in relation to Navajo public school districts.

COMMISSIONER RUIZ. Well now, you have stated the problem. In espousing these changes which are principally as you indicated, budgetary, are you considered likely or do you feel that you are being listened to and taken seriously as a special problem child entitled to much help and much more budgetary consideration? You stated that you were pursuing that. Are you getting sympathetic ears?

DR. ROSS. At this point there has been a public awareness generated through discussion by a number of individuals along this line. At this point in time there has been no official meeting with the county officers or with the State department or anyone else specifically on this one area.

COMMISSIONER RUIZ. Now, with respect to public awareness, are you speaking about the Navajo public, or are you speaking about the, let us say, the public outside of the reservation?

DR. ROSS. I think at this point I am speaking of possibly the one segment that Mrs. Tippeconnic had mentioned earlier, that those individuals within our school district that are within power structure areas, and at this point, one of the things that we are attempting to do is to go out to the chapter levels through a recently organized districtwide Indian employees association so that this same information gets out to the chapter levels in their own native language and in a manner where they understand some of the basics of school operation.

COMMISSIONER RUIZ. Well, public awareness is the first good step in the right direction. Thank you.

ACTING CHAIRMAN HORN. Mr. Buggs?

MR. BUGGS. No questions.

ACTING CHAIRMAN HORN. Let me ask counsel some questions a minute.

I would like the record to be very clear on the source of funding for the five districts we have discussed which are Gallup-McKinley, San Juan County, Tuba City, Kayenta, Window Rock. We had an expert witness that gave us most of the picture as far as it goes on Johnson O'Malley. That's Exhibit 34. What I would like to see is that each of the exhibits, 39, 45, 48, 49 and 50, where we've asked for student and professional and staff ethnic profile, to have added as appropriate the budget data which shows the source of funding for these school districts in terms of Federal, broken down by programs; State, broken down by program, and local and any others. Can we do that since the witnesses have left the stand of the previous four districts?

MR. GLICK. Mr. Chairman, we have that information, and with your permission we will insert it in the record with the other material.

ACTING CHAIRMAN HORN. Insert it with those exhibit numbers and just make it comparable so the reader can understand it.

MR. GLICK. Yes.

Acting Chairman Horn. I have no further questions.

Any further questions of counsel?

Thank you very much. You are both very impressive witnesses and good luck in what you are doing.

Now, ladies and gentlemen, before we break for lunch I would like to announce that over the last several days we have had the presence of several members of our State Advisory Committees to the United States Commission on Civil Rights. Rita Madrid of the Arizona Committee was here yesterday. Chairman MacDonald of course is a member, and he welcomed us on Monday. Peterson Zah and Juana Lyon, you heard from, and Louis Tellas of the New Mexico State Advisory Committee was here yesterday. Are there any other members that I just haven't recognized in the audience?

These are two of the 51 committees we have throughout the Nation. They serve without compensation, made up of a cross-section of representatives and distinguished citizens in the State.

At this point we will recess until approximately 2:15, to begin the afternoon session.

[At 12:50 p.m. the hearing was recessed, to reconvene at 2:15 p.m.]

WEDNESDAY AFTERNOON SESSION

OCTOBER 24, 1973

Acting Chairman Horn. The afternoon session will begin. Let me just say for the benefit of the members of the audience that we will be considering the role of the Bureau of Indian Affairs schools this afternoon, as well as the views of the division of education of the Navajo Tribe on education on/off the reservation and in BIA schools generally.

For the benefit of those in the audience who do not speak English, Dr. Billison will be available at our break to translate that, and I will have you translate those comments in a minute. We will try to take a break at 5:30.

We will assemble at 6:00, at which point any individual is welcome to testify, and we will maintain an open session, which is the first time in the 16-year history of the Commission this has been done, until 8:00 o'clock, at which time there will be a closing statement which I will read on behalf of my colleagues.

So our first witnesses this afternoon are a BIA community panel, Carol Howard, Mary Garcia, and Herman Norris, if they would please come forward.

[Miss Mary Garcia, Mrs. Carol Howard, and Mr. Herman Norris were sworn and testified as follows.]

TESTIMONY OF MISS MARY GARCIA, PAST PRESIDENT, STUDENT COUNCIL, FORT WINGATE HIGH SCHOOL; MRS. CAROL HOWARD, MEMBER, ADVISORY BOARD, CHUSKA-TOHATCHI SCHOOL; AND MR. HERMAN NORRIS, EDUCATION COORDINATOR, NAVAJO TRIBE

ACTING CHAIRMAN HORN. Mr. Glick, will any of the witnesses need the services of the interpreter?

MR. GLICK. I do not believe so.

ACTING CHAIRMAN HORN. All right. Proceed, Mr. Glick.

MR. GLICK. Thank you.

For the record, will you please each state your name, your address, and your occupation, beginning with Mr. Norris.

MR. NORRIS. Herman Norris, Tuba City, Arizona.

MR. GLICK. And your occupation, Mr. Norris?

MR. NORRIS. Education coordinator for the Navajo Tribe.

MR. GLICK. Thank you. Miss Garcia.

MISS GARCIA. I'm Mary Garcia from Shiprock, New Mexico, former student president of Fort Wingate High School.

ACTING CHAIRMAN HORN. Could the clerk adjust the microphone, please, so the witnesses can be heard.

MR. GLICK. Would you say that again, please Miss Garcia.

MISS GARCIA. Okay. I'm Mary Garcia from Shiprock, New Mexico, and I'm a former student council president from Fort Wingate.

MR. GLICK. Fort Wingate High School?

MISS GARCIA. Fort Wingate High School.

MR. GLICK. Mrs. Howard.

MRS. HOWARD. My name is Mrs. Carol Howard, and I'm from Twin Lakes, and my mailing address is Box 541, Window Rock, Arizona.

MR. GLICK. Where are you employed, Mrs. Howard?

MRS. HOWARD. Community development, Navajo Tribe.

MR. GLICK. Thank you. I would like to begin the questions with Miss Garcia who recently graduated from Wingate High School. Is Wingate High School a BIA boarding school?

MISS GARCIA. Yes, sir. It's a BIA high school.

MR. GLICK. How many students are there, do you know?

MISS GARCIA. Last year, they had close to 1,000 enrolled, but when school ended in the fall, they only had close to 800.

MR. GLICK. What had happened to the other 200?

MISS GARCIA. They had dropped—they dropped out of school.

MR. GLICK. Dropped out of school?

MISS GARCIA. Or they either, you know, went to another school or something.

MR. GLICK. Have you always attended boarding schools from your early education?

MISS GARCIA. Yes.

MR. GLICK. What other school did you go to besides Wingate?

MISS GARCIA. Shiprock Boarding School.

MR. GLICK. Shiprock Boarding School?

MISS GARCIA. Yes.

MR. GLICK. Thank you. Can you tell us, in your own view, about the quality of education you received at Wingate Boarding School?

MISS GARCIA. At Wingate High School, I feel that I received not enough education from it; and I feel that, you know, all students there should have, you know, more education in it, in grade-wise, you know, grade average. You know, it's real low, like a grade four average.

MR. GLICK. Grade four average in reading, you mean, or what in high school?

MISS GARCIA. Well, the highest grade average is grade eight.

MR. GLICK. In the high schools?

MISS GARCIA. In the high school.

MR. GLICK. In the high school seniors?

MISS GARCIA. Yes.

MR. GLICK. When you say their average is grade eight, you mean in reading level?

MISS GARCIA. In reading level, yes.

MR. GLICK. And mathematics or other subjects?

MISS GARCIA. Well, really, in reading. In the reading level, it's grade eight.

MR. GLICK. Why do you think that level is so low?

MISS GARCIA. [No response.]

MR. GLICK. Do the teachers work with the students? Do they try to help them along?

MISS GARCIA. Yes. They help us, but most of the students don't get enough help that they need, you know, like in reading, you know— Well, they just started a program recently, and they're getting the students to improve their reading average. And, well, we're having help, but I feel that we're not getting as much help as we need.

MR. GLICK. And do the teachers make the students work very hard? Do they expect them to perform very well?

MISS GARCIA. Yes.

MR. GLICK. What is it like, living in a dormitory of a BIA school?

MISS GARCIA. Well, the dormitory life, it's all right, except like if we need something, the aides aren't there when we need them, and you know, like we've had so many AWOL problems in the school and all that, you know, because when the students needed the dormitory aides, you know, if they needed them or they needed to talk to them, nobody was there. Either, you know, the offices were closed to—the counsellors' office or something, or they were out for something. And that's some of the reasons why we had so much AWOL problems in high school.

MR. GLICK. When you say "AWOL," you mean runaway, is that what you mean?

MISS GARCIA. Runaways, and besides AWOL, we have drinking problems, too.

MR. GLICK. Drinking problems in the school, too? Is that common?

MISS GARCIA. Yes.

MR. GLICK. And is that the older students or even younger students?

MISS GARCIA. Both young and old.

MR. GLICK. Was there any instruction in the Navajo language in Wingate High School, Fort Wingate High School?

MISS GARCIA. I don't think so. Not that I know of.

MR. GLICK. Did you learn anything about the culture of the Navajo people and about their history in high school?

MISS GARCIA. Yes. We had classes in it. We had Navajo classes, you know, and reading—like in LA [language arts], classes, you know, we had tales, like coyote tales and all that. That's what they, you know, taught us.

MR. GLICK. Miss Garcia, could you lean a little bit up closer to the mike, please. I cannot hear you.

MISS GARCIA. Okay. As I was saying, yes, you know, we had some Navajo studies in school; Indian mythology and some of those, you know, Indian courses. We had—we studied about the Indians.

MR. GLICK. Was there very much of that or was that—

MISS GARCIA. Very little.

MR. GLICK. Very little?

MISS GARCIA. Not much.

MR. GLICK. Not much. I see. Were there Navajo-speaking teachers?

MISS GARCIA. We had a few Navajo teachers, Navajo-speaking teachers.

MR. GLICK. And were the dorm aides Navajo-speaking?

MISS GARCIA. Yes. They were Navajos. Some were Anglos.

MR. GLICK. There must have been some rules for determining conduct in the dormitories. Did the students have any impact in making those rules or were they all made by the school administration?

MISS GARCIA. Some were made by the students. You know, they'd give out—you know, they give out in papers and ask for suggestions and the students would suggest, you know, how to—how the rules should be in the dorm and all that. It wasn't mainly, you know, the dorm aides. The students suggested some, too.

MR. GLICK. Do parents, your parents and other students' parents, visit the school very often?

MISS GARCIA. I don't think so. I've been to a couple of, you know, school board meetings, and they invite parents. And from I gathered, you know, we only had parents from local area, not from, you know, out from the reservation; just people from—you know, parents from the local area.

MR. GLICK. There are students at Fort Wingate who were not from the reservation, from other tribes?

MISS GARCIA. Yes. We have some from Zuni, and we have a couple of Anglo students going there. One, I know he came from Louisiana, going to school there.

MR. GLICK. But most of the students were Navajo?

MISS GARCIA. Most of them were Navajo.

MR. GLICK. Okay. Now, I would like to ask Mrs. Howard, you are a member of the District 14, Bureau of Indian Affairs Advisory School Board; is that correct, Mrs. Howard?

MRS. HOWARD. Yes, sir, I am.

MR. GLICK. And that is an advisory school board for the Chuska-Tohatchi School?

MRS. HOWARD. Yes. That's right.

MR. GLICK. Mrs. Howard, were you elected to or were you appointed to that board?

MRS. HOWARD. I was elected by the local Twin Lakes Chapter community people.

MR. GLICK. What are the responsibilities of that advisory board?

MRS. HOWARD. Well, number one is to represent the local community people with better communication with the school administrators.

MR. GLICK. And how often does the board meet?

MRS. HOWARD. They meet once a month.

MR. GLICK. And do you discuss with the superintendent of the school what policy should be followed?

MRS. HOWARD. Well, unless there is an important meeting, then we usually have the agency superintendent there. But, other than that, we usually have our meetings with the principals.

MR. GLICK. Do you advise on the employment of teachers? Do you select the teachers?

MRS. HOWARD. Yes. We make the recommendation to the principal, and he—they always approve it.

MR. GLICK. Do you have any responsibility for the curriculum?

MRS. HOWARD. Well, during the time that I have served, we haven't really—we haven't really gotten as far as approving curriculums, but, if we ever did so, it would have to be through the leadership of our principal.

MR. GLICK. I understand that there was a BIA school advisory board meeting at Fort Wingate and that the advisory boards were told what their responsibilities are by BIA officials. Can you describe what they said, the officials; what the duties of the advisory board were?

MRS. HOWARD. Well, due to my employment, I wasn't able to attend the workshop. But I understand that most of the duties and responsibility was to have better relationship with the other agencies, like the Bureau of Indian Affairs and the tribal leaders, and also the public schools and, also, we were to keep the local community people, which we represent, well informed of all the school activities and school affairs and so forth.

MR. GLICK. I see. You were to keep the community informed.

MRS. HOWARD. Right.

MR. GLICK. But that is really not the community where the children that are in the school come from.

MRS. HOWARD. I'm sorry. I didn't hear you.

MR. GLICK. Well, do the children come—who are in the Chuska-Tohatchi School, boarding school, come from all over the reservation?

MRS. HOWARD. Yes, they do. Some of them come in from Arizona.

MR. GLICK. So that your keeping the local community informed is not really informing the parents of the students who are at the school.

MRS. HOWARD. Well, yes, we do have to. I would say that if I was representing my local community people, that I also am representing the Navajo children, which is the same. And I think that if I was considering a Navajo child, that I would give exactly the same recommendation which I think is right for every child, to be the way I think that they should be treated and, also, to have a better expansion of the boarding school education program. And that's how I mean when I say that I'm going to represent an Indian Navajo child.

MR. GLICK. I see. Do you see any major problems at the Tohatchi-Chuska School, as a member of the advisory board?

MRS. HOWARD. Well, not really in the administration of the school but on the problems of runaways.

MR. GLICK. Runways is a serious problem?

MRS. HOWARD. Yes.

MR. GLICK. Why do the children run away, in your opinion?

MRS. HOWARD. I can say that the students run away because most of the time—just like it was mentioned here, there are not enough aides to really look after the students. And, also, a lot of times, there will be loneliness to go home.

MR. GLICK. What grades are Tohatchi-Chuska School?

MRS. HOWARD. Elementary and junior high school.

MR. GLICK. Elementary and junior high.

MRS. HOWARD. Yes.

MR. GLICK. Is there any drinking problem in the school?

MRS. HOWARD. Well, not really. Not really—it's not really a problem.

MR. GLICK. It's not a problem in that school.

MRS. HOWARD. But there is some.

MR. GLICK. There is some.

MRS. HOWARD. Yes.

Mr. Glick. I would like to turn, then, to Mr. Norris and ask him—well, first, let me establish that you are a member of an advisory board for the BIA school in Tuba City?

Mr. Norris. Yes, sir. Yes, sir, I am.

Mr. Glick. Can you tell us a little about your own educational history? What schools did you go to?

Mr. Norris. I attended the Tuba City boarding school, and then I attended the boarding school in Riverside, California; also Lawton, Oklahoma, and I went to a private school in Tucson.

Mr. Glick. So you have spent—excuse me. Most of your education was in BIA boarding schools?

Mr. Norris. Yes, sir.

Mr. Glick. Do you think that the advisory boards to the boarding schools have enough authority and enough powers to be able to influence the schools in terms of curriculum and employment and the way the children are treated?

Mr. Norris. No, sir, I don't. Simply because the curriculum and other things are already prewritten, and all the school administrator does is present the proposal to the school board members and they get their signatures on the proposal and that's how it's passed. So, really, as far as our say-so, as to what might go into the curriculum, we don't have too much say-so.

Mr. Glick. In other words, you could not decide that a course in something to do with Navajo culture or language should be in the school and presented and expect to have it adopted?

Mr. Norris. No, sir, because the priorities for the curriculum are already set by BIA officials.

Mr. Glick. Suppose the advisory board were to find that the students were not treated well in dormitories, would you be able to impose any kind of control over that situation?

Mr. Norris. I suppose so. But during our meetings, these are never brought out. The problems within the school are never brought out.

Mr. Glick. How often does your advisory board meet?

Mr. Norris. Once every month.

Mr. Glick. Once a month.

Mr. Norris. Yes.

Mr. Glick. What do you think would have to be done to change the level of authority of the advisory boards? Would that have to be a policy from BIA in Washington, or do you think it could be done here?

Mr. Norris. I believe so because we're informed that, since we're not civil service employees, we don't have too much say-so over what authority we might have over BIA.

Mr. Glick. It is a question that you are not Government employees and, therefore, cannot interfere in Government policy? Is that the way it is?

Mr. Norris. Well, that's just what we're told and we don't go any further than that.

MR. GLICK. When you say, "that's what you're told," who tells you that? What level of BIA do you relate to? Is it the local principal or the Navajo area administrator?

MR. NORRIS. I suppose the regulations come from the area office, our central office.

MR. GLICK. Have you ever seen any regulations defining the duties of the advisory board?

MR. NORRIS. No, sir. But there is a school board handbook that states that we just only function as an advisory to the—a recommendation body to the schools.

MR. GLICK. I see.

Mr. Chairman, I have no further questions at this time.

ACTING CHAIRMAN HORN. Thank you very much.

Commissioner Freeman.

COMMISSIONER FREEMAN. Mr. Norris, what value do you think there is in such an advisory board as you are on?

MR. NORRIS. What value?

COMMISSIONER FREEMAN. Yes.

MR. NORRIS. Well, at this point and present time, I don't think there's any value unless we have some kind of authority that is given to the school boards.

COMMISSIONER FREEMAN. What is the stated purpose of the advisory board?

MR. NORRIS. What is its purpose?

COMMISSIONER FREEMAN. What is the stated purpose? You were appointed to the advisory board, were you not?

MR. NORRIS. I didn't quite understand your question.

COMMISSIONER FREEMAN. When you became a member of the advisory board, what did you believe that you could do or accomplish?

MR. NORRIS. Well, when I was elected by the community people within the Tuba City Chapter, I thought I would at least have some say-so in school matters or school activities, anything that had to do with the school there. But I found out later that all I was was just an advisory to the school there and which authority I didn't think too much of it. Since we lack the authority there, I don't think there's any real purpose in the school board.

COMMISSIONER FREEMAN. Is this board—the limitations imposed by the Bureau of Indian Affairs?

MR. NORRIS. You mean the number of members?

COMMISSIONER FREEMAN. Yes. Whatever you are able to do, the limitations on what you are doing, what you can do, are they imposed by the Bureau?

MR. NORRIS. Oh. The duties of the school board?

COMMISSIONER FREEMAN. Yes.

MR. NORRIS. Well, like I said, all we can do is recommend, advise the principals, superintendents, and then the final decision lies with the superintendent.

COMMISSIONER FREEMAN. Have any of your recommendations been adopted?

MR. NORRIS. No, ma'am. As far as I know, none.

COMMISSIONER FREEMAN. Have you ever raised any question about the purposes of the board? Have you ever—

MR. NORRIS. Yes. I questioned the people that we make recommendations to, and I think that's the reason why I'm here: because there's no action or no consideration taken on our part whenever we submit our resolution to the schools by the chapter or any other organization that would like to have a change in some kind of policies.

COMMISSIONER FREEMAN. Are you saying that there probably is no real desire to have the advice of such a board?

MR. NORRIS. No, ma'am, because—simply because, first of all, actually we don't have a superintendent in the Tuba City area. Several people have been acting in the acting position, and there is no line of authority within the agency.

Whenever we want to have some answers from the acting principal, they just say, "Well, I'm in an acting position. I can't very well give you a different answer." And what they do is they call the area office over here for any directives that might be given to them. So this is mostly what the agency back in Tuba City is against now. And that superintendent's position has been vacant for over a year now.

COMMISSIONER FREEMAN. What do you believe should be done to change the situation?

MR. NORRIS. Well, we did submit several resolutions to have a Navajo superintendent put in that position, and we recommended several people that we thought were qualified. But then, here again, we are informed that, since there is a freeze on positions, lack of monies, this never came about.

COMMISSIONER FREEMAN. So you are sort of in a static situation?

MR. NORRIS. Yes.

COMMISSIONER FREEMAN. Thank you.

ACTING CHAIRMAN HORN. Commissioner Ruiz.

COMMISSIONER RUIZ. How often do school board meetings take place?

MR. NORRIS. Once every month, sir.

COMMISSIONER RUIZ. And that has been going on continuously? How are they called?

MR. NORRIS. Sir?

COMMISSIONER RUIZ. How are they called? How are the board meetings called?

MR. NORRIS. Well, in my agency, the principal, Mr. J. D. Sax, is the one that sends out letters. Although I am the president of the school board there, I never have a chance to send out any letters, or I never make up any agenda. The agenda that—or subjects to be discussed are already on the agenda that is sent out by the principal of that school.

COMMISSIONER RUIZ. Is Tony Lincoln, a Navajo, still area director of the BIA?

MR. NORRIS. I believe so.

COMMISSIONER RUIZ. You're not sure?

MR. NORRIS. He is, sir.

COMMISSIONER RUIZ. Does he really have any influence or is he merely a kind of a figurehead?

MR. NORRIS. Well, to my thinking, I think he's only a figurehead.

COMMISSIONER RUIZ. Who really has the influence?

MR. NORRIS. If he did have the authority, then he would work with the tribe but—

COMMISSIONER RUIZ. Who really has the influence?

MR. NORRIS. I would say either Mr. Rex Franklin or either Mr. Tucker.

COMMISSIONER RUIZ. Are they both Anglos?

MR. NORRIS. Yes, they are.

ACTING CHAIRMAN HORN. Could we identify their positions for the record. What positions do either of those gentlemen hold? Could we get their titles?

COMMISSIONER RUIZ. What position does—

MR. NORRIS. I think Mr. Rex Franklin is assistant area director.

ACTING CHAIRMAN HORN. And Mr. Tucker?

MR. NORRIS. He's with the education.

COMMISSIONER RUIZ. No more questions.

ACTING CHAIRMAN HORN. Commissioner Rankin.

COMMISSIONER RANKIN. You have given good and bad points connected with the boarding school.

I would like to ask Mr. Norris, first. You attended one, didn't you?

MR. NORRIS. Yes, sir, I did.

COMMISSIONER RANKIN. Did you do it through choice or did you have to? Could you have attended the public school in Tuba City?

MR. NORRIS. Well, at that time, I guess I really didn't have no choice.

COMMISSIONER RANKIN. You had no choice?

MR. NORRIS. No, I didn't.

COMMISSIONER RANKIN. Isn't there a public school in Tuba City?

MR. NORRIS. Well, at that time, there was only a public school to serve about 50 kids.

COMMISSIONER RANKIN. Miss Garcia, did you have any choice, or did you choose a boarding school?

MISS GARCIA. I chose.

COMMISSIONER RANKIN. You are happy that you did?

MISS GARCIA. I guess I could say yes.

COMMISSIONER RANKIN. Okay. I wondered about that. If I had asked you, Mr. Norris, to list one, two, three, the changes you would like to see made in the boarding schools, list the most important and the next most important and the third most important.

MR. NORRIS. Well, I would say the line of authority would be the first one.

COMMISSIONER RANKIN. What?

MR. NORRIS. Line of authority.

COMMISSIONER RANKIN. Line of authority is first.

MR. NORRIS. Yes.

COMMISSIONER RANKIN. What is the second one?

MR. NORRIS. That some authority be given to the school board so they can function accordingly.

COMMISSIONER RANKIN. Authority be given to the school board. That is the second one?

MR. NORRIS. Yes, sir.

COMMISSIONER RANKIN. And the third, if you have any suggested change?

MR. NORRIS. I would say services.

COMMISSIONER RANKIN. Service.

MR. NORRIS. Yes. The people being served.

COMMISSIONER RANKIN. Yes. Would you all agree with what he has said, that those are the three crying needs?

MR. NORRIS, MISS GARCIA, MRS. HOWARD. [Witnesses nod affirmatively.]

COMMISSIONER RANKIN. Well, Miss Garcia, I have one other thing to say. I am glad to see that students here seek advice and counseling. Over my way, they want anything else but advice and counseling. So it is a little refreshing to me to hear you ask for it. Thank you very much.

ACTING CHAIRMAN HORN. Mr. Buggs.

MR. BUGGS. No questions.

ACTING CHAIRMAN HORN. Mr. Glick, any further questions?

MR. GLICK. No, sir. I do not have any.

ACTING CHAIRMAN HORN. Thank you very much for coming and joining with us. We appreciate having your testimony.

The next panel will be a panel representing the contract schools. Will Mr. Dennis Maria, Ruth Todacheeney, Ethelou Yazzie, Stella Tsinajinnie, I guess; John Barbone, please come forward.

DR. SAMUEL BILLISON. Tsinajinnie.

ACTING CHAIRMAN HORN. Tsinajinnie.

[Mr. John Barbone, Mr. Dennis Marria, Miss Ruth Todacheeny, Miss Stella Tsinajinnie, and Miss Ethelou Yazzie were sworn.]

ACTING CHAIRMAN HORN. Is there a need for a translation for members of the panel?

MISS YAZZIE. Yes.

ACTING CHAIRMAN HORN. Dr. Billison, would you repeat the oath.

[The witnesses were sworn in Navajo and testified as follows.]

TESTIMONY OF MR. JOHN BARBONE, MEMBER, BORREGO PASS SCHOOL BOARD; MR. DENNIS MARIA, STUDENT, RAMAH-NAVAJO HIGH SCHOOL; MISS RUTH TODACHEENE, STUDENT, ROUGH ROCK HIGH SCHOOL; MISS STELLA TSINAJINNIE, TEACHER, ROCK POINT SCHOOL; AND MISS ETHELOU YAZZIE, DIRECTOR, ROUGH ROCK DEMONSTRATION SCHOOL

ACTING CHAIRMAN HORN. All right. So affirmed, for the record. Mr. Glick.

MR. GLICK. Thank you, Mr. Chairman.

Will you each please state your name, your address, and your occupation for the record, beginning with Miss Yazzie.

MISS YAZZIE. I'm Ethelou Yazzie, employed as a director of Rough Rock Demonstration School, by the Rough Rock School Board, Incorporated.

MR. GLICK. Miss Todacheeny.

MISS TODACHEENY. I'm Ruth Todacheeny. I'm a student of Rough Rock High School.

MR. GLICK. Miss Todacheeny, do you want to testify in Navajo?

MISS TODACHEENY. [In Navajo.]

MR. GLICK. Well, I assume that she said what she previously said in English. Okay.

Dennis Maria, your name and address and occupation, please.

MR. MARIA. My name is Dennis Maria. I'm from Ramah, New Mexico, and from Ramah-Navajo High School.

MR. GLICK. You are a student at Ramah High School?

MR. MARIA. Yes.

MR. GLICK. Thank you.

And Miss Tsinajinnie.

MISS TSINAJINNIE. I'm Stella Tsinajinnie from Rock Point. I work there at the school as a Navajo language teacher.

MR. GLICK. And would you ask Mr. Barbone to state his name and address and occupation for the record, please, Dr. Billison.

[Translation into Navajo.]

MR. BARBONE [translation from Navajo]. John Barbone, and my address is Borrego Pass, New Mexico.

MR. GLICK. Would you ask Mr. Barbone if he is a member of the board of directors of the Borrego Pass School Board.

[Translation into Navajo.]

MR. BARBONE [translation from Navajo]. Yes, sir.

MR. GLICK. Mr. Chairman, Miss Tsinajinnie has a statement which she wishes to submit to the record on behalf of the Rough Rock community school board. May that be accepted?

ACTING CHAIRMAN HORN. Fine. That will be accepted as Exhibit 51.

MR. GLICK. Thank you.

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[The document referred to was marked as Exhibit No. 51 for identification and received in evidence.]

MR. GLICK. I would like to begin questioning with Mr. Maria. Can you tell us which schools you have attended?

MR. MARCIA. I have attended public schools and contract school.

MR. GLICK. Which public schools did you attend?

MR. MARIA. Washington Junior High. That's in Albuquerque.

MR. GLICK. In Albuquerque?

MR. MARIA. Yes.

MR. GLICK. Did you attend any schools in the Gallup-McKinley school district?

MR. MARIA. No.

MR. GLICK. Now, did the public school that you attended in Albuquerque have any Indian language and culture courses?

MR. MARIA. No, they did not have it.

MR. GLICK. Can you tell us whether there are such in the Ramah-Navajo High School? Ramah-Navajo High School is a contract school, is it not, run by the tribe?

MR. MARIA. Would you repeat it?

MR. GLICK. I say, Ramah is one of the contract schools that is run by the Navajo Tribe or tribal board?

MR. MARIA. Yes.

MR. GLICK. Can you tell us what the curriculum is like at the Ramah High School?

MR. MARIA. The curriculums are science, math, social studies.

MR. GLICK. Are there Navajo language courses?

MR. MARIA. Yes. There's a Navajo language and an English and a vocational, agriculture, and arts and crafts.

MR. GLICK. Are there other courses about Navajo life and history besides the Navajo language?

MR. MARIA. Yes, there is.

MR. GLICK. How do you like those courses?

MR. MARIA. I like them very much.

MR. GLICK. Are they taught by Navajo teachers?

MR. MARIA. Yes, they are taught by Navajo teachers.

MR. GLICK. Are there other Navajo teachers and counselors in the Ramah High School?

MR. MARIA. Yes, there are.

MR. GLICK. Were there Navajo teachers and counselors in the high school in Albuquerque that you attended, or the school in Albuquerque?

MR. MARIA. No.

MR. GLICK. Now, I would like to ask Miss Todacheeny some questions that are similar to those for Mr. Maria. What schools have you attended?

[Translation into Navajo.]

MISS TODACHEENY [translation from Navajo]. Rough Rock.

Mr. Glick. Did you go to Rough Rock as an elementary student?

[Translation into Navajo.]

Miss Todacheeny [translation from Navajo]. Yes.

Mr. Glick. Do your mother and father speak English?

[Translation into Navajo.]

Miss Todacheeny [translation from Navajo]. Neither one speaks English.

Mr. Glick. When you went to the Rough Rock School, before it became a community school, contract school, was Navajo spoken by the teachers and administrators of the school?

[Translation into Navajo.]

Miss Todacheeny [translation from Navajo]. I attended the—prior to Rough Rock, I attended BIA schools at Pinon, Chinle, one semester at Many Farms, and the second semester at Rough Rock.

The reason for attending so many schools—or, the reason for leaving Many Farms was that many of the students made requests on several things which were not listened to or adhered to, and because of this, there were many runaways. And I learned of this Navajo-controlled school, and so I decided to attend this, and I feel a lot more comfortable at this school now.

And then it seems that the BIA schools are more or less leaning to subjects other than the study of curriculum. For instance, there are more of recreational types of programs, and many students from the BIA schools do not listen to their parents. And I feel, at Rough Rock Demonstration School, we are receiving more cultural instructions through resource people within the area.

I know, at the BIA schools, there are hardly any parents. In one incident, the school board requested that we have some parents to visit the school, and this was disapproved by the BIA school. At Rough Rock, we have an open type of thing where, when you request a different consultation with medicine men or parents, we get these people, and I feel that the Rough Rock Demonstration School is more able to work with the parents.

Mr. Glick. Thank you, Dr. Billison.

I would like to ask Miss Yazzie some questions about Rough Rock as the director of the school. Can you give us a brief history of how Rough Rock changed from being a BIA-operated school to being one that is a community school, contract school?

Miss Yazzie. I probably won't give you the complete breakdown. But it was already in the process when I first learned that Rough Rock was local controlled.

And I was a teacher prior to the directorship, and I was in other positions, such as curriculum designing and Navajo specialist. I became aware of Rough Rock program as a local control when I was still in college in Indiana.

MR. GLICK. How would you describe the differences between Rough Rock as an institution and a BIA boarding school? Rough Rock does have some boarding students, does it not?

MISS YAZZIE. Right.

MR. GLICK. But it also has day students?

MISS YAZZIE. Right.

MR. GLICK. As do many of the BIA schools.

MISS YAZZIE. Yes.

MR. GLICK. Tell us of how you view the difference between Rough Rock in relationship to the Navajo pupils and the BIA schools?

MISS YAZZIE. Probably the academic program is not that different from other schools in terms of subjects taught in the program for the students there. But the thing that impresses me at Rough Rock is the local involvement, the parental involvement in the community. Voices are implemented within that academic program or the community development.

MR. GLICK. Do the community people visit the school?

MISS YAZZIE. We have visitors from within our own community and all the way to Canada. So we have visitors almost every day. But they do come in, and I think the atmosphere there is that they feel that they are welcome to visit their children if they are attending there, or just to come and visit.

MR. GLICK. The school is characterized as a demonstration school. Is that correct?

MISS YAZZIE. Right.

MR. GLICK. What is it supposed to demonstrate, in your opinion?

MISS YAZZIE. I'm not really sure on that one. But I think it has to do something with financial situation, and we are funded by different private foundations as well as the BIA portion.

MR. GLICK. So you receive money in addition to BIA contract funds?

MISS YAZZIE. Right.

MR. GLICK. I see. Thank you.

Now, I would like to ask, if I may, Miss Tsinajinnie some questions. First, about your own educational history, Miss Tsinajinnie, where did you go to school?

MISS TSINAJINNIE. I started off at Lukachukai. Then I went to Rock Point for 2 years. Then I went to Shiprock. These were all boarding schools. And then I went to Albuquerque—that was a border town school—for several years, and then I went to Flagstaff High School.

MR. GLICK. As a Navajo language teacher at Rock Point, how would you characterize the difference between the Rock Point School and the boarding schools that you attended. I know Rock Point is also a boarding school, but it has day students, too, is that correct?

MISS TSINAJINNIE. Yes.

MR. GLICK. Well, what is the difference in the way the children are treated and the way they are instructed and their attitudes towards the school, between the BIA boarding schools and Rough Rock?

MISS TSINAJINNIE. Well, in the BIA school that I went to, I think we were treated like a bunch of sheep, I guess. There were about, at least, 80 students to one instructional aide. That was too many.

And in our setup at Rock Point, we don't have that problem because we have instructional aides on duty and we have some house parents that do help. You know, the parents of those kids that are in the dorm, they do help there in the dormitory, you know, to see what dorm life really looks like.

The dorm life is way different, too. They have just one—this year, they added this activity thing, you know, where you learn sash belt weaving and basket weaving and all these other Indian arts and craft. That is something different, you know, other BIA schools don't have it.

MR. GLICK. Is runaways a serious problem at Rough Rock?

MISS TSINAJINNIE. There never was a serious problem at Rock Point because all the students that are there, that are going to school at Rock Point, they are from that community. You know, we don't have kids that are from other communities. We've got our own kids that are from that community that goes to school there.

So, you know, we do have—you know, 2 years ago, we had only 10 ran away out of the whole year; and then last year, when it became a contract school, only 7 ran away. So no, it's not really a problem.

MR. GLICK. Can you tell us exactly the kind of teaching that you do in the Rock Point School? What do you teach?

MISS TSINAJINNIE. Well, I teach Navajo language, you know, where I teach the little kids how to read and write the Navajo language. And I also teach social studies. And then I teach math.

MR. GLICK. Are there other teachers at Rock Point, teaching the same as you are?

MISS TSINAJINNIE. Oh, yes. You know, they call that Navajo language teachers, you know. We have 10 of them, and then 2 are being trained for the same thing. They are interns. And then we have one substitute teacher that is an NLT, too.

MR. GLICK. There are Navajo language teachers and English language teachers?

MISS TSINAJINNIE. Yes. We have 13 of those English language teachers.

MR. GLICK. And they are equal in status in the school?

MISS TSINAJINNIE. Yes.

MR. GLICK. Even though the Navajo language teachers may not have yet obtained their college degrees?

Miss Tsinajinnie. Yes.

Mr. Glick. Thank you, Miss Tsinajinnie.

Dr. Billison, I would like to ask Mr. Barbone some questions now. Mr. Barbone is a member of the BIA advisory school board at Borrego Pass. I would like to ask him how much influence that school board has on important school matters such as hiring teachers and the administration and operation of the school. What authority do they have in their relationship to the professional administrators of the school?

[Translation into Navajo.]

Mr. Barbone [translation from Navajo]. Yes. Borrego Pass is a school that was established in 1946 as a BIA school. Three years ago, the Bureau had plans to discontinue this school along with some other smaller schools and consolidate them into other larger schools. We asked that this school be left open, and to the extent that we made a commitment to the community to continue this school as a local controlled school.

And through the meetings and consultations with the Rough Rock School, we were able to formulate a policy by which this school became a local Navajo-controlled school. We do hire our own personnel through a process of which they present to us their credentials. And, based on this, we select our teachers. In the same manner, we select our kitchen staff with those that have completed twelfth grade education and with experience. So we do hire our own personnel.

We had the experience of running this school as a local controlled school 1 year, and this year is our second year. We have a school board composed of six locally-elected Navajo members, and most of them advocate that we have this type of school.

There is a combination of two communities, which meet in this little community, and the position that the community has now is to continue this school and try to expand. This has been in discussion recently.

There is a bilingual program which, we feel, is, to some extent, better than the monolingual schools. We feel that the monolingual language schools foster many dropouts, and the local controlled school is to the contrary. On our curriculum, we do have some Indian cultures such as weaving and other arts and crafts that were mentioned previously.

And, personally, I have never been to school for any formal education. And whenever I have to speak to a non-Indian group, I require [illegible] interpreter.

We feel, as a community and as the board, that we are able to continue to control our own school. And, personally, I am happy that this is the case now.

Mr. Glick. Thank you, Dr. Billison.

Mr. Chairman, I have no further questions at this time.

Acting Chairman Horn. Very well. Commissioner Ruiz.

COMMISSIONER RUIZ. I have no questions.

ACTING CHAIRMAN HORN. Commissioner Rankin.

COMMISSIONER RANKIN. There are about 25,000 students in BIA schools and about 1,000 in contract schools. I think it is the consensus of opinion of this group that you would like to see more BIA schools become contract schools, is that correct or not?

Well, Miss Yazzie, can I ask you this question. Do the contract schools have better facilities? For instance, let us take the library. Does the school at Rough Rock have a library or Rock Point?

MISS YAZZIE. Yes.

COMMISSIONER RANKIN. Does it compare favorably with those in BIA schools better, or is it worse?

MISS YAZZIE. Probably we have more books on the Indian, all different kinds of tribes.

COMMISSIONER RANKIN. Do you have laboratories?

MISS YAZZIE. Yes. In high school.

COMMISSIONER RANKIN. So you think the equipment and facilities are better in contract schools than BIA schools, am I correct?

MISS YAZZIE. So far, most of the contracted schools are small enough where we can individualize most of the courses.

COMMISSIONER RANKIN. Well, one last question, because time is running out on us. Do you happen to know, by observing, do more graduates from contract schools go on to colleges, to higher education than those from the regular BIA schools? Would you hazard a guess on this point?

MISS YAZZIE. So far, Ramah High School is the only one who has some graduates. But this is the first year that Rough Rock has a complete program.

COMMISSIONER RANKIN. Are they encouraged to go on to college?

MISS YAZZIE. Right.

COMMISSIONER RANKIN. Well, thank you very much.

ACTING CHAIRMAN HORN. Commissioner Freeman.

COMMISSIONER FREEMAN. I have no questions.

ACTING CHAIRMAN HORN. Mr. Buggs.

MR. BUGGS. No questions.

ACTING CHAIRMAN HORN. Mr. Glick, any further questions?

MR. GLICK. Yes. I would just like to ask Miss Yazzie: How many students are there in the Rough Rock School?

MISS YAZZIE. We have 400 students.

MR. GLICK. 400?

MISS YAZZIE. Right.

MR. GLICK. And I would like to ask Miss Tsinajinnie: How many students are there in the Rock Point School?

MISS TSINAJINNIE. 318.

MR. GLICK. And do you know how many students there are in the Ramah High School, Mr. Maria?

MR. MARIA. One hundred to 145.

MR. GLICK. 145.

MR. MARIA. Yes.

MR. GLICK. And, Dr. Billison, will you ask Mr. Barbone how many students there are in the Borrego Pass School?

[Translation into Navajo.]

MR. BARBONE. [translation from Navajo]. There are 96 students.

MR. GLICK. I have no further questions, Mr. Chairman.

ACTING CHAIRMAN HORN. Thank you very much, ladies and gentlemen.

Yes, please.

MISS YAZZIE. The question asked by Mr. Glick about the demonstration, quote and unquote. I think the demonstration may have something to do with Indian programs which are going on there and the Navajo language and the culture implemented and the parents being in the classroom, and we use the Navajo language as a means of instruction in the classroom.

ACTING CHAIRMAN HORN. Thank you very much. We appreciate you coming and sharing your experiences with us. We are very grateful.

The next panel will be a panel made up of Bureau of Indian Affairs administrators. Mr. Lowell Findley, educational specialist; Faralie Spell, education specialist; Abraham Tucker, acting assistant area director, education. Would they please come forward.

[Mr. Lowell Findley, Mrs. Faralie Spell, and Mr. Abraham I. Tucker were sworn and testified as follows.]

TESTIMONY OF MR. LOWELL FINDLEY AND MRS. FARALIE SPELL, DIVISION OF EDUCATION, BUREAU OF INDIAN AFFAIRS, WINDOW ROCK, ARIZONA; AND MR. ABRAHAM I. TUCKER, ACTING ASSISTANT AREA DIRECTOR, EDUCATION, NAVAJO AREA OFFICE, BUREAU OF INDIAN AFFAIRS

ACTING CHAIRMAN HORN. Please be seated.

Mr. Glick.

MR. GLICK. Thank you, Mr. Chairman.

For the record, would you please each state your name, your address, and your occupation, beginning with Mr. Findley.

MR. FINDLEY. My name is Lowell Findley, Tohatchi, New Mexico. I'm an education specialist for the Division of Education, BIA.

MRS. SPELL. I'm Faralie Spell, Window Rock, Arizona, supervisory education specialist, BIA.

MR. TUCKER. I'm Abraham I. Tucker. I live at Window Rock, and I'm the acting assistant area director, education, for the Navajo area division of education.

MR. GLICK. It appears that you have been joined by another gentleman whom I assume is counsel.

Mr. Tucker. Yes.

Mr. Glick. Could he please identify himself for the record.

Mr. Berkson. Yes, sir. I'm Barry Berkson, an attorney with the Department of the Interior out of Albuquerque, New Mexico, as counsel.

Acting Chairman Horn. That was Barry Ferguson?

Mr. Berkson. Berkson, B-e-r-k-s-o-n.

Acting Chairman Horn. B-e-r-k-s-o-n.

Mr. Glick. Thank you.

Acting Chairman Horn. Okay.

Mr. Glick. I would like to begin with Mr. Tucker.

Mr. Tucker, how many students is the Navajo area division of education responsible for? How many students are in your schools?

Mr. Tucker. The present enrollment, as of October 19th, is 20,627.

Mr. Glick. Twenty thousand, six hundred—

Mr. Tucker. Twenty-seven.

Mr. Glick. And of these, can you give at least an approximation of how many are boarders in schools and how many are day students?

Mr. Tucker. I think you can get an idea of that. I don't have the figures, but I'll give you the types of schools we have. We have 48 boarding schools, 8 dormitories which include the off-reservation dormitories and one reservation dormitory, and 10 day schools.

Mr. Glick. Could you submit precise figures for the record?

Mr. Tucker. Yes.

Mr. Glick. Thank you.

Acting Chairman Horn. May I say, that would be Exhibit 52. And, Mr. Glick, I would like the same demographic profile breakdown of employees, students, budget sources, et cetera, as with the previous public school districts.

[The documents described, to be marked as Exhibit No. 52 for identification, were received in evidence.]

Mr. Glick. Will you then submit the breakdown of the employment of the school system, BIA school system on the reservation in terms of the professional grades and nonprofessionals and ethnic and racial breakdown?

Acting Chairman Horn. Counsel will furnish you, when we return to Washington, with the specific categories because I want comparability between all school systems and I want them all responding in the same way.

Mr. Glick. Mr. Tucker, I have a memorandum, which is labeled, "Navajo Area Philosophy and Objectives of Education," which you gave me in your office last week, I think it was. Although it is called a "revised draft," I assume that it is an official statement of the philosophy of the Navajo area.

MR. TUCKER. Yes, sir, it is.

MR. GLICK. The second point, under the heading "Educational programs for Navajo children and youth should be developed around curricula activities and materials which will help each one: Point B, to maintain pride in his heritage, to cherish that certain body of tradition as people value enough to preserve from generation to generation and to respect the culture and heritage of others"—can you tell me how that philosophy is implemented in the schools?

MR. TUCKER. Yes. First of all, the curricula that's been developed and is in the process of being developed now has a long history. We started with the goals that we had, and of course the goals were based on the philosophy at the time, and these four goals were, and still are, to provide for the unique needs of the Navajo children. I'm simplifying them, by the way, from the chart that maybe you've seen.

The second goal was, is to involve the Indian parents and Indian people. The third was to provide a public relations system to let the public, Indian and non-Indian, know what was going on in our schools. And the fourth goal is to make use of all other sources than within ourselves, such as the Title programs, other Federal programs and non-Federal programs, in order to accomplish the other three goals.

Now, from those goals, we went out to the people. We started at the grassroots level to determine what everybody, including the Navajo people and the administrators and so on, thought were the needs of the Navajo children. From the needs within each curricula area, there were developed ideas of what should be in the curricula.

And so, over the past few years, these curricula have been developed. Now, this is to meet the need, the general unique needs of the children, whether it's with respect to language ability, second language ability or arithmetic or mathematics, you know, the other subject matter areas.

Now, with respect to their culture, there are two ways that we have tried to implement that goal. One. We, a number of years ago, entered into a contract with the University of New Mexico to write up 6-week projects—

MRS. SPELL. Four to 6 weeks.

MR. TUCKER. Four- to 6-week projects for each grade, beginning with the beginners grade and up through the senior year in high school. We call them Navajo social studies projects. And the essence of these projects was to enable the Navajo pupil and student to understand where he came from, his culture, legends and so on, up through what's on the reservation today, and, finally, what is the future outlook for him on the reservation or off the reservation.

In addition, in our schools, especially the boarding schools, we have what are known as Indian Clubs where a Navajo aide or someone who's Navajo, or Indian—there are other—we have employees, Indian employees of other tribes who will take it upon themselves to teach the Navajo students Indian dances, arts and crafts, and things like that.

MR. GLICK. When you say that you went out to the grassroots into the Navajo people to find out what they thought should be in the curriculum, can you tell me how that process worked?

MR. TUCKER. Now, when you get into a detail like that, might Mrs. Spell answer that since she's the head of the branch of curriculum, you see?

MR. GLICK. Yes. Would you speak—

MR. TUCKER. She's involved in that.

MR. GLICK. Yes.

MRS. SPELL. I would be happy to. As I mentioned before in our discussion, we feel that there are three different factors that must be involved in the development of any curriculum.

The first of these relates to the nature of the learner himself, or, in other words, to the needs of the children involved. Another facet relates to the nature of the learner's adult society as we view it today and to the degree that we can predict what it's going to be in the future. And the third facet relates to the nature of the discipline itself. In other words, what concepts, what skills need to be included in any curriculum or any curriculum guidelines that you develop for a particular subject area.

It was our belief that the people in the community, the students themselves and the teachers, were our best source of information in relation to the needs of the children and, also, in determining what would be related to the nature of the adult society. Curriculum committees were established in all of the schools, in all of the eight subject areas. And if you start counting real quickly and think there are only seven academic, the eighth one is guidance because, since most of our schools are boarding schools, we have almost more of a necessity for curriculum in relation to guidance than we do almost in the academic areas.

These committees spent 2 years developing—determining what the needs of the children were. In the process of this development, they had—they met with parents, they met with school board members, and they also made contact with—inquired of students what they felt should be included in the curriculum.

MR. GLICK. When did this take place, Mrs. Spell?

MRS. SPELL. In— Well, I came back to the reservation in 1967 and in November, and it was just getting off the ground then. Our first meetings were held in the spring semester of 1968. We continued this in the 1969-1970 school year with a few problems because of budgetary limitations and of travel having been curtailed considerably. But we did spend this amount of time on determining what the needs were.

Actually, in writing the curriculum guidelines, in some instances—and guidance was an example—we felt that within our own house, we had the necessary expertise to write the guidance curriculum guidelines because of the fact that our concept of guidance is considerably different than that that you get in college courses and things of this nature.

MR. GLICK. Mrs. Spell, on the subject of curriculum, could you compare the curriculum in the BIA schools to that in the demonstration schools? Are they very similar or very different?

MRS. SPELL. I would think that there would be similarities. I'm sure that in the demonstration, at Rough Rock Demonstration School, at Rock Point, and at Borrego, there is more stress and more emphasis on culture, more stress and more emphasis on the teaching of the Navajo language to the degree that the children both read and write it. More of this nature than what we have in our schools.

MR. GLICK. Well, apparently, the curriculum in Rough Rock and Rock Point had a great deal of community input. That is, that—

MRS. SPELL. That's right.

MR. GLICK—guidance from the community. Yet, you say that in designing the curriculum for the BIA schools, there was also input from the community; parents and students, et cetera. Why do the curriculum come out in two different places?

MRS. SPELL. I think, again, you have small communities involved at Rock Point and at Rough Rock and at Borrego Pass. The most—a great number of our schools are what we call feeder schools where we are bringing in students from a much broader, broader area. And we don't have quite the same amount of input that others do, and I think, to some extent, this would make a difference.

In some instances, there's a difference in opinion, too. I think you find the opinion of parents who live in an area like Chinle or Shiprock or Tuba City, for example, that they may have a little different opinion on these matters than people in the more isolated areas do.

MR. GLICK. So you think it is a question of the difference—rather, the difference is that those advisors whom you sought out in the community were not as isolated as the advisors—

MRS. SPELL. In many instances, this would be true.

MR. GLICK. I see.

Mr. Tucker, you heard the testimony, I am sure, of the people who testified as members of the community or advisory boards for the BIA schools. And some of the testimony indicated that the people on these committees did not really feel that they had any impact on the schools.

Yet, we have also heard that previous testimony, which I think you have heard, that it is absolutely essential to the Navajo people that they control their own schools, that the children in the schools cannot really be successfully educated unless Navajos control their schools.

Would you care to comment on that.

MR. TUCKER. Yes. As Mrs. Spell pointed out, there is a divergence of opinion amongst Navajos. When you stop to think, I believe there are some 136,000 Navajos in an area as big as West Virginia; there's bound to be a difference of opinion, a natural difference. And that is why, when the whole idea of Indian involvement and self-determination came forth, we, in the Navajo area, began to present—and this began in '69—began to present to the people through the school boards, chapter meetings, through the agency school boards and the interagency school board and the tribal education committee—we began to present what their options were, for them to make a decision.

Which way would they like the education of their children to go? And we gave—the options are, and still are, for them to make a decision, either individually or as a group: One, to remain with the Bureau and be advisory school boards. Two, which they've done in the past, go public. And everybody realizes the power of a public school board. The third option, as illustrated by Rough Rock, Rock Point, and Borrego Pass, is to go contract individually as each community feels that it would like to do so and has the capability. And the fourth option is for the Navajo Tribe, itself, to decide to take over the total operation of schools or any part of it, actually.

These are the options. And not only have we given them options, but we, on request, have given them the advantages and disadvantages of these options. If I may just give one, a disadvantage of going contract is that the contract school is dependent on Congress from year to year as to the amount of money it will get. The advantage of going public is that, by State law, every school district gets a certain amount of money. They never have to worry about money, you see.

MR. GLICK. So that the people on the reservation then selected the option, for the most part, of remaining with BIA?

MRS. SPELL. Yes. This is the fact of life. Actually, I've been prompting the tribal education committee, off and on and up through the last meeting, that they ought to be thinking about taking a stand. Because there—for instance, there is a disadvantage of having each school go contract on its own because the tribe has no control over these individual private contract schools.

They might want to say to themselves that, "Since we are one nation, that we ought to decide, as a tribe, to do the contracting," in the same sense that the State—every State has the responsibility for the education of children in the State, and then, by law, delegates some of the policymaking and so on down to the local school board; the same might happen if they so desire on the Navajo, you see.

MR. GLICK. Well, could BIA contract with the tribe for the education of all children on the reservation?

MRS. SPELL. There, I believe there's some question about whether the tribe is a legal entity, the Navajo Tribe, that is, because they never under—I forgot the number and name of the law—elected to write a constitution, you see. But this is no problem. All they need to do is incorporate, just like the local school boards do in order to be a legal entity to contract with.

MR. GLICK. Would the Bureau in Washington, do you think, encourage the idea of contracting with the tribe for education of the 20,000 students?

MR. TUCKER. All—I can just give you some past history. When Mr. Lincoln came here as area director, or shortly thereafter, he proposed that the tribe take it over, the whole thing, but nothing came of it. And that's all I know.

MR. GLICK. To whom did he propose it?

MR. TUCKER. Proposed it to the tribe, to Mr. MacDonald at a meeting, and it went to Washington, too, but nothing came of it. Now, I know no more than that. But if you want the details, you might question him about that.

MR. GLICK. Well, would you assume that Mr. Lincoln would have the authority to enter into a contract with the tribe if the tribe so desired?

MR. TUCKER. You see, when you get into legal things like that, I'd rather not even venture a guess. I don't know.

ACTING CHAIRMAN HORN. I must say, if I might interject, counsel, will the counsel for the Department of the Interior appear with Mr. Lincoln later today? Because as long as we have the benefit of legal counsel present, we could easily swear him and get some of this on the record as to just which matters are in whose area of authority. I, for one, would be fascinated to learn this, since I find it a somewhat muddying maze of confusion.

MR. GLICK. Well, perhaps counsel might be able to tell us right now.

ACTING CHAIRMAN HORN. Will counsel be present when Mr. Lincoln testifies?

MR. BERKSON. Yes.

ACTING CHAIRMAN HORN. All right. Fine. We could swear him at that time and, maybe, clarify some of these matters.

MR. GLICK. The advisory boards—going back for just a minute—how do you see their authority, their responsibility?

MR. TUCKER. If I may, could I give you a fascinating brief history of how the whole thing was established on the Navajo? We decided, on the Navajo, that if school boards were going to be established, we wouldn't issue a manual release saying, "You shall on such-and-such a date do this and this," as was done in another area, without mentioning it. But we threw it out to the field for them to handle it anyway they saw fit.

COMMISSIONER FREEMAN. Excuse me, Mr. Tucker.

MR. TUCKER. Yes.

COMMISSIONER FREEMAN. Will you tell us who the "we" is that you keep referring to?

MR. TUCKER. The division of education working with the area director then, Graham Holmes.

So they started. And after a few months, we ran a survey to see what was happening. And we found a wide variety of activity going on. For instance, some school boards had two members. Some had 18. Some were elected, and some were appointed. Some met on call. Some met because they decided they would meet regularly. Some of them did nothing, and some did a lot of things.

At about the same time, we got some rumblings from the field, from the school board members, "Just what is our authority and what are we supposed to do?" So, again, we went to the field and we took about 6 months or more to do this, went to the local school board members, to the employees of the school, the chapter houses and said, "What do you think should a school board do? How should it organize? What should be its purposes?" And so on.

And this was all collated at the agency level, and then the agency school board members met at our Hunters Point School in the summer of '69 to iron out any difficulties they might have or any differences of opinion—which there were many, by the way—and, finally, they came up with a document that was presented to the legal offices of the tribe to make sure it was all right.

And it's in here, the resolution that was passed by the tribe, establishing the whole school board concept on the Navajo, how they're to be established, how they're to be organized, when elections occur, how many, who can serve and why, and also their duties and responsibilities, you see.

MR. GLICK. Well, getting back specifically on the point of the responsibilities, if an advisory board—

MR. TUCKER. Yes.

MR. GLICK.—finds that the principal of a school is inadequate or incompetent or for some reason should be removed, can they remove him?

MR. TUCKER. No. According to the school board setup in the resolution, the tribal resolution, a local school board that is having a problem that can't be resolved— Now, they're advisory and they feel they have substantive reasons for the removal of the principal, as you suggest, then their next step is to present this to the agency school board because each local school board sends representatives to the agency school board.

Now, there, the agency school board is supposed to take up this matter with the agency school superintendent who supervises all the principals in his agency. And it is up to him to take action.

Now, there's a further safeguard. In case the agency school superintendent doesn't take action, then each agency school board, according to this resolution, elects two members to sit on the interagency school board that takes up matters, suggestions, problems, at the area level with the Navajo area division of ed., and then it's up to us to do something, you see.

MR. GLICK. But, essentially, the answer then is "no," that an advisory board cannot remove a principal?

MR. TUCKER. That's right. Because we—the Bureau, we, the employees in the Bureau are subject to civil service regulations which were designed, by the way, to protect the rights of employees.

MR. GLICK. Certainly.

ACTING CHAIRMAN HORN. Excuse me. At this point, counsel, have we got in the record the resolution for the establishment of advisory boards?

MR. GLICK. No, I have not yet.

ACTING CHAIRMAN HORN. Can we—are you planning to put it in? It is relevant, I think, at this point. Can we put it in as Exhibit 53.

MR. GLICK. I have a copy of it.

ACTING CHAIRMAN HORN. Fine.

MR. GLICK. Yes. With your permission, Mr. Chairman, we will introduce the resolution.

MR. TUCKER. Here. I can give you the whole thing. By the way, the book, may I explain the book?

ACTING CHAIRMAN HORN. Right. Please do.

MR. TUCKER. The book—as soon as the resolution was passed—we entered into a contract with Dr. Stout of the university, Arizona State University, to train the school board members in everything that the resolution says they're supposed to be doing. In other words, how to be school board members within the concept of the resolution and, also, to introduce them to what a public school board can and does do in the course of the training.

And he developed that book to use as a training manual, which isn't cast in bronze, by the way. The school boards can, through the interagency board, through the tribal education committee, bring up a resolution in the council to change anything in that book.

[The documents described were marked as Exhibit No. 53 for identification and received in evidence.]

MR. GLICK. Can an advisory board hire teachers?

MR. TUCKER. I would like to enlarge on what it means to be advisory. There's more power in being advisory than meets the eye.

Let's take your example. Can a school board hire a principal? When there is a principal vacancy, we follow civil service regulations, and the position is advertised. People who think they can qualify apply. Those who apply are judged. Their application is judged by a committee to see whether they meet the minimum civil service requirements for a principal's job.

And those who do qualify, their names are placed on a selection list. This list, plus their official personnel folders, goes to the supervisor—in this case, would be the school superintendent. He studies these folders, calls a meeting of the agency school board, in this case, and presents the qualifications of each applicant to these members, making recommendations as to who it would appear would be best qualified.

Now, what happens in practice is that the school boards have certain opinions. And if those opinions disagree with what the principal, what the supervisor suggests, the supervisor takes the suggestion of the school board because when they suggest something in relation to hiring somebody, they are suggesting one out of, let's say, five qualified people.

So, therefore, there's no violation of any civil service regulation, and in order to make the school boards feel that they are contributing to the operation of the school, they will accept the feelings of the school board and choose that person.

MR. GLICK. Well, they will. But they are not required to? That is, that it is not mandatory that they do.

MR. TUCKER. Yeah. That is true. But, in practice, I'm telling you what happens in practice; in practice, they do accept what the school board says. Now—

MR. GLICK. What I have actually been getting at, trying to get at in this line of questioning is the contrast between the Bureau's advisory board and a public school board. Clearly, a public school board of education has considerably more authority over the operation of the schools than does an advisory board, is that correct?

MR. TUCKER. That, I—that is absolutely true. And that's why, again, we make these options. We tell the people, through those 4 years of training sessions, through meetings of the different local boards, "If you want more power then you have these other options, either to contract or go public, true, you will have more power then."

MR. GLICK. And it is my understanding that you have urged the tribal education committee or department to begin thinking in terms of assuming responsibility for education, entirely, on the reservation?

MR. TUCKER. No. No. Our policy is not to steer them in any direction. No. We give them the options and say, "Think about which would be best for your people."

MR. GLICK. Do you have a view on that, yourself?

MR. TUCKER. Yes. I have a view on that. I believe in Indian self-determination.

MR. GLICK. Do you believe then that the tribe should operate the schools?

MR. TUCKER. No. I believe that if Indians are supposed to determine what they want to do, then it's my job to present all the options, all the advantages and disadvantages of each option, and then for them to make a considered decision.

MR. GLICK. Just changing for a moment, we have heard some testimony about the problems in the boarding schools, such as runaway, alcoholism. What would you define as the most serious problem that the schools have or the students have?

MR. TUCKER. Again, if I may, since Lowell Findley has been deeply involved in establishing constitutions and also on the committee to—what to do in case of runaways, may he answer that?

MR. GLICK. Yes. Mr. Findley, would you proceed? You are the director of counseling, are you not?

MR. FINDLEY. Well, I'm in guidance and health and phys. ed., and student rights.

MR. GLICK. Well, could you respond then to that question about the problems in the boarding schools?

MR. FINDLEY. Well, I'm afraid I'd have to agree that probably the most serious problems are the runaways because it's a matter of life and death, especially after it gets cold weather.

Probably the second most serious problem is discipline, in general. By that I mean the students don't always do what you ask them to. They are showing more resistance and more rebellion. And we have been working with this, with committees, with students, trying to let them talk out their own problems, and we have developed a constitution to preserve their rights and set forth the way that these kinds of problems are to be handled.

MR. GLICK. Are the parents of the students very much involved with the schools, helping solve these problems?

MR. FINDLEY. Yes. More and more. It's been about 3 or 4 years ago that it really got started, taking the children home to their parents to have their parents talk with the children concerning serious problems. And most of these serious problems are drinking or AWOL, I guess, that they take them home for. They don't take them home every time that they don't do their lesson or mind the teacher.

They have counselors who do try to work with any pattern of behavior that is not acceptable. If the child continually fights, he is counseled with. And if the counselor feels that he can help the child by having him talk with his parents, he takes him there. If he feels like someone else can help him, he takes him there.

MR. GLICK. Mrs. Spell, do you have any idea of how many students enter the BIA school systems speaking only Navajo?

MRS. SPELL. A study that was done 2 or 3 years ago indicated, at that time, that 90 percent of the children who enrolled in Bureau schools were not able to function in English at the first grade level.

MR. GLICK. What measures are taken to overcome this difficulty?

MRS. SPELL. We have, or are attempting to develop materials for teaching English as a second language that are relevant and purposeful to Navajo children, that are based on early childhood education, to begin with, and that are concerned with the contrastive analysis of Navajo and English, and the problems that a Navajo-speaking child is going to have in learning English and that use methods through which children will induce the structures of English and be able to generate the particular structures being taught, rather than parroting them or modeling and mimicking them, as was done at one time as a method of teaching English as a second language.

MR. GLICK. Well, you're saying that materials are being prepared?

MRS. SPELL. They are. We have two different sets of second language learning materials being prepared so that children can have—or that teachers and schools can have a choice. We made the error several years back of insisting that—

MR. GLICK. Could you wait just a minute, Mrs. Spell, while we this minor matter is taken care of?

MRS. SPELL. Yes.

ACTING CHAIRMAN HORN. I think we can proceed, counsel.

MR. GLICK. Mrs. Spell, what I am trying to get at is is—

MRS. SPELL. We have two sets of materials in use. One is called CITE, C-I-T-E materials being developed by an organization, Consultants in Teaching in Total Education at the University of California at Los Angeles, and those are—it's a total program at the beginner level. It's a language arts program at the first, second, and third grade level that incorporates the four modalities, listening, speaking, reading and writing, and in teaching a second language you've got to be concerned with all of those.

MR. GLICK. This is English as a second language?

MRS. SPELL. That's right.

MR. GLICK. Is this used in all the schools?

MRS. SPELL. It's used in some schools. In other schools teachers are using what we call NALAP materials, which stands for Navajo Area Language Arts Project. Again, there's a relationship between the two but it does give teachers a choice. The CITE materials are much more highly structured and much more prescriptive than the NALAP materials.

MR. GLICK. Neither of these would fall under the category of bilingual?

MRS. SPELL. Well, I think they would to this extent, very definitely, that with the use of both materials we advocate and in practically all instances at this time a Navajo-speaking teacher aide is involved in the teaching. There are many concepts and understandings that need to be developed in the primary grades prior to the time the children have enough facility to develop those in English. So we see the Navajo-speaking aide and the English-speaking teacher working as a team and that both languages are used. Although English may be the language that is being taught, understanding and meaning in that language is developed in the first language.

MR. GLICK. But Navajo is not taught?

MRS. SPELL. Not as a subject. Now, we do have six schools in what we call a bilingual-bicultural program in which a great deal more emphasis is placed on Navajo where initial reading and writing are taught in Navajo.

MR. GLICK. There are six schools?

MRS. SPELL. Six schools, that's right.

MR. GLICK. Well, would you propose to expand that to include all the schools or is this an experimental process?

MRS. SPELL. Again it would depend upon the wishes of the parents.

MR. GLICK. I see.

I'd like to ask one more question, Mr. Chairman, of Mr. Tucker.

Mr. Tucker, you indicated that your theoretical view is that Indians should have self-determination and—at least, let's say in the field of education, which is your specialty, and of course this is consistent with the President's message of July 8, 1970.

I'd like to know whether you have seen anything, since I know you have been here in the Navajo for a long time, many years, have you seen any changes come about as a result of the President's statement? And I'd also like to know how you communicate your view as a senior educator in the Bureau to your chief and to Washington? How is this particularized?

MR. TUCKER. Okay.

Especially with the beginning of the school board program, establishment of school boards, there has been a tremendous increase in the involvement of the Navajo people in the education process. By the way, not only—I should mention this—beginning today, tomorrow, and Friday, the school boards are having an areawide workshop up at our Teec Nos Pas school. This is the second one this year. This is what they requested in addition to the one we usually run anyhow every year. You see, they felt there was a need for it so we're having it up here. Now, there's been a tremendous involvement of the parents in the education program as compared to the time before when we only had PTA's or what we called parents' meeting nights. So that is one indication of the change.

Other indications with respect to the pupils, there's been over the years more pupil—the ratio of pupil to population increase is greater in attending school. That is, more kids attend school each year. That's all schools, public and Bureau, compared to the population increase than heretofore, than years before. Now, there's some reason for that. Let's say one possible reason is that the parents realizing the value of education and being involved in the schools are seeing to it that the children go to school. They don't keep them out as much as they did in years gone by.

MR. GLICK. But essentially, then, the process of Navajo self-determination in the area of education has only come through whatever strength may have been given or more activities of the advisory boards; is that correct?

MR. TUCKER. Say that again.

MR. GLICK. Well, what I'm getting at is that actually, in terms of the Bureau's promoting the policy of Navajo self-determination in education, the only aspect of that—aside from the contract schools, of course—has been an increase in the functioning of the advisory boards? I've not heard of anything else that relates to self-determination in the sense of control.

MR. TUCKER. Well, here again, we—I, let's say, that is the second part of your question. I, at the school superintendent's meetings which we have once a month, will pass on the things that come from Washington along this line or the things—or I will discuss with them proposals that we can agree on for implementing self-determination. We transmit out to the field a coming or proposed legislation in Congress to speed up this self-determination idea.

I think there are seven acts before Congress right now—or seven bills, I should say—to help speed up this, the whole idea of self-determination. One I remember offhand is to establish a grant authority. Essentially the little I know about it, this would make things easier than going through the contract route. If money was granted to tribes rather than contracting with them. But this is one of seven bills.

So, what we do is present options, as I said, and urge the people to start thinking about what they could or would like to do. Now, by the way, we work with the tribal division of education which was established, you see. They have ideas too and they promote these ideas as well as we do on self-determination.

MR. GLICK. Thank you.

Mr. Chairman, I have no further questions, but I would like permission to introduce into the record the document I referred to called, "Navajo Area Philosophy and Objectives of Education," which was prepared in the division of education of the BIA Navajo area.

ACTING CHAIRMAN HORN. Okay. That will be Exhibit 51, I believe.

MR. GLICK. Thank you.

[The document described was marked Exhibit No. 54 for identification and received in evidence.]

ACTING CHAIRMAN HORN. Very well.

Commissioner Rankin?

I'm sorry, it's Exhibit 54. I apologize.

COMMISSIONER RANKIN. Mrs. Spell, the determination of curriculum is done by the education department of BIA; is that correct?

MRS. SPELL. Not without input from—

COMMISSIONER RANKIN. With input from the community and from the students, is that right? And from school administrators?

MRS. SPELL. That's right. To the degree that we were capable at our level— As I mentioned, we had the committees established at the school level who worked with the parents, with school board members and then in relation to the social studies, when the actual curriculum was written for the social studies, we contracted with the University of Washington to take the needs that had been established at the local level and work those into social studies units.

The writers from the University of Washington came down four times during the year that they were writing and had meetings with community people, with school board members, and with teachers so that they had an opportunity to evaluate. One of the members on the writing team was a Navajo teacher from Crystal who worked with them throughout the year, and she had additional input from Navajo people on developing the social studies because we feel this is probably the greatest area where we can implement culture and—

COMMISSIONER RANKIN. Well, in the education department who determines it? Does the whole department or is there a committee or do you or—

MRS. SPELL. The way we have—out of the school committees representatives were selected to be members of the agency committee. Now, here we get into our whole bureaucracy again, but members of the agency committee became members of an area committee. A curriculum balance committee, which was made up of the five school superintendents and the people in our office and representatives from each of the agencies, made the final determinations on what went into the curriculum based on the information that came to us from the field.

COMMISSIONER RANKIN. Well, do you believe that the determination of curriculum is a technical matter or should be determined by holding hands up?

MRS. SPELL. It's a matter that— It's partially technical, very definitely, but I think that it's also something, as I mentioned before, that requires the involvement of students and parents and teachers as well.

COMMISSIONER RANKIN. Well, has bilingual education in your mind proven itself?

MRS. SPELL. I don't think we're—now, again, if you're thinking in terms of bilingual education where reading and writing is in

Navajo initially, I don't think that we're—that I'm in a position to say so far as our schools are concerned that yet that it has. I think we're going to need a couple or 3 more years to determine that.

COMMISSIONER RANKIN. Well, being a school man myself I've noticed how the curriculum has changed in secondary schools from the day I was in high school, I can tell you they have certainly changed. Have you made any changes outside of language in the last 3 years in the curriculum?

MRS. SPELL. I think that we have made some real changes in the area of social studies.

COMMISSIONER RANKIN. Have you added natural sciences like botany or biology?

MRS. SPELL. Well, certainly we have at the high school level, we have those courses.

COMMISSIONER RANKIN. Do you have astronomy?

MRS. SPELL. No, I doubt that we have astronomy in any of our high schools.

COMMISSIONER RANKIN. In the social studies you've combined into courses called social studies rather than teaching economics, the sociology, or political science; is that right?

MRS. SPELL. That's right. At the elementary level it's a combination of all and this is the direction in which the teaching of the social studies at the elementary level is taking nationally now.

COMMISSIONER RANKIN. Is that good or bad?

MRS. SPELL. Pardon?

COMMISSIONER RANKIN. Combining all the social sciences into one survey course; is that good or bad? I mean I'm questioning that a little bit myself.

MRS. SPELL. There's—with the increase in knowledge and the way—the amount of knowledge, and we're told that the amount of knowledge will double in the time from a child enters school as a first grader until he finishes in the 8th grade, and about all you can do today is what they term "posthole," and it's not so much the subject matter as the process in teaching the social studies that is important where children have an opportunity to make decisions.

In previous teaching of the social studies controversial issues were swept under the rug. They were no-no's. You didn't dare do anything with something that was a controversial issue. In the teaching of the social studies today we train and advocate that controversial issues be a very significant part of the teaching of the social studies and that in relation to these controversial issues that alternative solutions are pursued and then decisions made on that basis.

COMMISSIONER RANKIN. Well, my criticism is when you try to teach in 1 year sociology, economics, political science, and all and try to take problems in four or five fields like that you sure skip a whole lot.

MRS. SPELL. My dear sir, we don't try to teach them all in 1 year. One year emphasis may be on government. Another year may be on sociology. Another year it may be on physical geography. We have themes for each of the years that go into that. You don't teach geography necessarily in the traditional program every year or history necessarily every year.

COMMISSIONER RANKIN. Well, I don't want to get into an argument on social science curriculum, but there are different views on it right now.

I have one other question and that is all. Why all these takeovers in the public schools and other schools in the last 2 or 3 years if the curriculum has kept up with the times?

MRS. SPELL. I don't quite understand your question.

COMMISSIONER RANKIN. Well, we have had these takeovers I've listened to at San Juan and Tuba City and other schools where the students came here and claimed that the curriculum was not modernized, it didn't meet their needs and they didn't like it. What's happened?

MRS. SPELL. I'm not in a position to speak for public schools.

COMMISSIONER RANKIN. Well, you have ideas, don't you, concerning the public schools? You've been pretty close to them?

MRS. SPELL. I have no comments to make about public schools. I've got enough to take care of my own situation and my own responsibilities for the Bureau schools.

COMMISSIONER RANKIN. If your curriculum hasn't changed much, why don't you have takeovers in your schools?

MRS. SPELL. Well, our curriculum has changed. It's changing rapidly right now.

COMMISSIONER RANKIN. You're doing a better job than the public schools, do you think? I mean, that's my conclusion of your opinion.

MRS. SPELL. All right.

ACTING CHAIRMAN HORN. I must say, as a fellow educator, Professor Rankin as a political scientist who has commented on some aspects of sociology ought to know that there's a fundamental ancient tribal law of reciprocity which is if you don't attack me I won't attack you, and I suspect that is what is at stake here.

Mrs. Freeman?

COMMISSIONER FREEMAN. Mrs. Spell—

MRS. SPELL. Yes, Mrs. Freeman?

COMMISSIONER FREEMAN—you indicated that in the sociology social studies courses that the classes frequently consider controversial subjects. Do these subjects include the positions with respect to water rights, the fishing rights, and the sovereignty of the Navajo Nation?

MRS. SPELL. Some of these could. Now, one problem that I can think of right quickly offhand is the plant at Shiprock that employs primarily women and what this does to the economy and to the social life. Another one is the Four Corners power plant; is another one, the strip mining on Black Mesa. These are the kinds of things again—things that are significant so far as the children are concerned.

COMMISSIONER FREEMAN. Well now, who leads the discussion?

MRS. SPELL. The teacher would, probably would in many instances. It might be that committees would prepare material and that you would have panel discussions or that a chairman or a member of a committee would lead a discussion also.

COMMISSIONER FREEMAN. The information that has been presented to this Commission is that the majority of the teachers are non-Indian; is that correct?

MRS. SPELL. That's correct.

COMMISSIONER FREEMAN. One of the proposals that I have made earlier today and yesterday was that as a condition of employment that these non-Indian teachers receive intensive orientation in the culture of the Indian which, of course, as of now they have not received, and I would like to know if you would comment on the extent to which, in your opinion, this could be done and this could be done soon.

MRS. SPELL. For a number of years, Mrs. Freeman, we have had a Navajo area conducted orientation program for all new teachers that has been conducted over a period of 2 weeks prior to the opening of school, and a good portion of that has been related to orientation in relation to the Navajo culture.

Now, we see this as only a beginning—

COMMISSIONER FREEMAN. May I ask you, who has conducted this?

MRS. SPELL. It has been conducted by a specialist in our office who is in charge from our standpoint. She has worked with committees of Navajo people—

COMMISSIONER FREEMAN. Is she Navajo?

MRS. SPELL. No, she is not. She is non-Navajo, but she has worked with committees of Navajo people in setting up the agenda for the orientation program for the 2 weeks. They did—they conducted the orientation, much of it themselves, and were very, very much involved.

COMMISSIONER FREEMAN. Well, this is what—I guess the reason why we are in this situation because it's sort of like the blind leading the blind. We have heard testimony from the pupils with respect to the lack of knowledge of Navajo culture, of the non-Indians. We have heard testimony concerning the fact that the non-Indian teachers, some of them were insensitive to the problems of the Navajo students. This is not an isolated bit of testimony. This is rather general.

When we raise the question as to who would have the power to put into operation some sort of program to change or improve this, always it led back to the Bureau of Indian Affairs, so you three here sit, you know, where as far as we are concerned, where the buck stops with you, and we're still looking at three non-Indians.

MRS. SPELL. That's right, that's true.

COMMISSIONER FREEMAN. From the point of what I have seen again there needs to be a recognition that the Indian and the Navajo need to be at the decisionmaking level.

MRS. SPELL. That's right.

COMMISSIONER FREEMAN. I'm not talking about the advisory level because you and I know advisory doesn't get you very far.

MRS. SPELL. No.

COMMISSIONER FREEMAN. Now—and this is addressed not only to you, Mrs. Spell, but to Mr. Tucker—something needs to be done; some changes need to be made. The Bureau of Indian Affairs cannot in my opinion continue to do—you know, not to do some of the things that need to be done. So, what do you see that you could begin to do now in terms of a more intensive orientation for the teachers that are being employed in the BIA schools?

MRS. SPELL. Well, from my standpoint and my responsibilities I think we could continue to work with the schools and with the agencies on implementing, if this has been stated to be a real problem, a more intensive program not only in orientation but in-service training of teachers in relation to Navajo culture. But—and I think the closer that this can be done to the school level the better because you have an opportunity to bring in people from right around that community who can conduct those and carry on those sessions.

COMMISSIONER FREEMAN. Could you also consider displacing some of those insensitive teachers?

MRS. SPELL. I wish we could.

COMMISSIONER FREEMAN. Why can't you?

MRS. SPELL. We find it very, very difficult through civil service regulations to separate personnel. In some instances where we have and it's gone as far as the Civil Service Commission, and it's been our decisions—our decisions have been overruled and teachers have been put back on duty with all back pay.

COMMISSIONER FREEMAN. When you have been aware—

MRS. SPELL. That there were very definite problems.

COMMISSIONER FREEMAN.—problems and created problems?

MRS. SPELL. That's right.

MR. TUCKER. I can give one example. This Navajo employee in order to discipline a student, a Navajo student, burned him. This is inhuman treatment and he was separated according to civil service regulations. He was reinstated by the—

COMMISSIONER FREEMAN. Have you separated a non-Navajo, non-Indian teacher, who has caused some difficulty?

MR. TUCKER. Yes.

COMMISSIONER FREEMAN. Who has mistreated a student?

MR. TUCKER. Yes. There is a rule that there is not—absolutely no corporal punishment to be administered and when a non-Navajo teacher, as has happened, does that, we gather the evidence and we separate them and a good number of them have been reinstated if for only some technical reason, you see.

But I would like to answer positively to your question. I have heard you ask this question to others, and I would wholeheartedly agree that ideally teachers or any employee, non-Indian employee, who wanted to work for the Bureau would be at Government expense as in the Peace Corps and—would be a certain period of time, a year or whatever time would be necessary to learn Navajo or Hopi, would be given a concentrated course before coming on duty, not only in the language but in the culture et cetera, you see, to develop an empathy for what they are going to do and with whom they are going to work.

Now, how could we do that? In the program memorandum originally called PPBS [Planning, Programming and Budgeting System], you know, we do this 2 years in advance, we are privileged to enter what we desire or think is necessary and so on, and we could and we will enter that in this next one. I say we will, and I will see to it that we do. However, in the process of the thing, of PM [program memorandum], we include a lot of things even according to an ample set of standards, what comes back for that year is one lump sum which is much, much less than what we need.

If I may give you one example here, we are 190 employees short of what we—to come up to par that we ended with last year and to have a minimum staffing program we would need 298 more. Now—which means that we actually need [$] five million more than we were actually given this year and I will say that there is some money coming. We got word that some money will be coming. I don't know how much, but all I am trying to say is that the process of asking for money according to certain standards, minimum standards, in the actual process when it comes back it's always less, especially in recent years, than what we need even for our minimum program.

So, again, to answer your question, we will go in for this kind of thing, but then again, you see, there are so many variables. There are so many teacher training programs on the reservation. The tribal division of education just got a Title IV program, and they are training teachers. The Navajo Community College is training aides to be teachers. And the Northern Arizona University holds classes at some of our schools at Toyei and Greasewood and Fort Lewis.

COMMISSIONER FREEMAN. Are they trained, the teachers who are already employed?

MR. TUCKER. No, they are training those who want to be teachers.

COMMISSIONER FREEMAN. I am talking about what needs to be done for those people who are in the position now to damage lives.

MR. TUCKER. I would like to think that of the total of 3,643 people that we have employed that those are a minimum. You know, this is a large organization and we do institute proceedings according to civil service regulations if an employee is not doing his job. We do that. Now, what happens thereafter we have given you some examples. Now, some of them are actually separated. They get separated.

By the way, if I may give you this, of the nonprofessional group, 85 percent are Navajo, and of the professional group, 11 percent are Navajo, which makes a total of 60 percent of all employees are Navajos on the Navajo—and it grows every year.

ACTING CHAIRMAN HORN. Commissioner Ruiz?

COMMISSIONER RUIZ. The panel members have been very patient with us in this brainpicking process that's been going on and we're really very grateful. The reason is that because of your vast experience your statements are very valuable to us in reaching constructive solutions.

Mr. Tucker, this morning we listened to witnesses who were proponents of and very favorable to bilingual education. Isn't the big problem of the BIA in assessing bilingual education that the BIA is waiting for proof positive that bilingual education is a good thing and is effective?

MR. TUCKER. I have a two part—

COMMISSIONER RUIZ. I'm not talking about English as a second language now.

MR. TUCKER. I have a two part answer.

Last Thursday a bilingual-bicultural conference was held at the Navajo Community College, and I attended the sessions then and they had them in two groups, one the English-speaking group, and one for Navajo-speaking group.

In the English-speaking group, Mr. Wayne Holm, who is the director of the Rock Point contract school, pointed out that there are many types of bilingual education, and along that line I would say that in every class where we have an aide, and we have them under Title I in the beginner's kindergarten, first and second grade, we have a form of bilingual-bicultural education. That's one type, you see. There are many types. Now, we also have the Title VII project at Toadlena and Sanostee, where we are training bilingual-bicultural teachers and also have classes for them to work with.

Now, that leads me to the second point. Not all Navajos are for bilingual-bicultural education. I will go back to the conference. On Friday, Irving Jones, who is a Navajo on our staff—he is now acting head of the branch of education liaison—went up to attend the Navajo sessions and he said they almost came to blows in one of the sessions that he attended because there was a certain group of certain Navajos who said, "We don't want our kids to go to a school to learn bilingually or biculturally. We want them to go to school to learn what they can learn in school, language, English language, and so on. We'll take care of the other part."

All I'm pointing out is there are differences of opinion and that's why we say we are for bilingual-bicultural education, but when the question was asked, "Would you spread it out into all schools?" No, because we need to listen to the people there.

May I give you another example? In the years when we were building new schools, after they are built we have a dedication where a medicine man comes and there's a big feast. Okay? In most places the traditional feast is mutton stew and fry bread and the things that a—a Navajo meal. Yet when we dedicated the Dizlth-na-o-Dith-Hle School way over on the eastern side of the eastern Navajo agency, near Tuba, the Navajo people there said, "We don't want the traditional meal; we want roast beef, mashed potatoes, and so on."

All I'm saying is Navajos are different all over the reservation. Some want public schools; some want boarding schools. Resolutions come in almost every day; they want a boarding school established if it's a day school. You see, so we need to listen.

COMMISSIONER RUIZ. Now, getting back to the original question then, in this overall assessment that you are making and observing, is the problem the BIA—the fact that it is waiting for some proof positive that bilingual education is a good thing and an effective thing?

MR. TUCKER. We're not waiting for that, no. We're doing it, and we will take it as it goes and implement it where it should be implemented as we have the money for it.

COMMISSIONER RUIZ. Then in presenting your opinion on these options as a civil service employee to your superiors, to the option in favor of bilingual education, what opinion have you given?

MR. TUCKER. On this subject?

COMMISSIONER RUIZ. Yes, that's the end of the question.

MR. TUCKER. That it would appear that there is value to bilingual-bicultural education where the people want it and where the children, let's say, come to school totally lacking in any English ability because there are some areas on the reservation where the children come with some English-speaking ability and so here again, like everything else, we're trying, as Mrs. Spell pointed out, the CITE, the English as a second language program, the NALAP program; we have the new math, and we have the new sciences and so on. We will implement these things as we talk with the people and they feel they need it.

COMMISSIONER RUIZ. Do any of the panel members speak or understand Navajo language?

MRS. SPELL. [Indicates no.]

MR. TUCKER. One or two words, as far as I'm concerned.

COMMISSIONER RUIZ. Do any of the members of the panel speak or understand a European language?

MR. TUCKER. A little bit of Spanish, I do, and a little bit of Yiddish.

COMMISSIONER RUIZ. Have any panel members had any training in the teaching of bilingual and bicultural education?

MRS. SPELL. Yes, sir.

COMMISSIONER RUIZ. You have?

MRS. SPELL. My master's degree was in teaching Navajo children to speak and read and write English, and I have been involved in a number of training sessions and workshops in teaching English as a second language since I've been on the Navajo.

COMMISSIONER RUIZ. Then you are in a position of sensitivity with relation to reaction. Do you believe that a united Indian family is a criteria as to whether bilingual education is desirable or effective?

MRS. SPELL. I think that any time that you are working with children from whom English is not their first language that there has to be a bilingual program.

COMMISSIONER RUIZ. And do you believe that this leads for unity and togetherness in the Indian family?

MRS. SPELL. I don't know that I could generalize on that specifically. Now, if—there could be situations where it might lead to disunity.

COMMISSIONER RUIZ. It might be what?

MRS. SPELL. It might lead to disunity.

COMMISSIONER RUIZ. Do you feel that there is family unity where the parent does not speak English and when the child does not speak Navajo?

MRS. SPELL. I think there would very definitely—I imagine communication would be quite difficult in a situation of that nature.

COMMISSIONER RUIZ. Wouldn't family unity be an overriding plus in the giving of your opinions to your superiors with relation to the effectiveness of bilingualism?

MRS. SPELL. I would agree on that.

COMMISSIONER RUIZ. Thank you.

ACTING CHAIRMAN HORN. Thank you, Commissioner.

Let me ask a number of questions, Mr. Tucker. I have a certain amount of sympathy for you, since I and you are both public officials in public education systems. I have the largest university in California and the largest system of higher education, but I'm still only 1 of 19 campuses, and I have an advisory board and do not have a local board of trustees, and I can make recommendations and they are narrowed down and whittled down by a chancellor's office, a Governor's department of finance, several committees of the legislature, et cetera. So I emphasize what you are going through.

But let me ask a couple of questions anyhow.

One, I'm curious, the extent to which we have Navajo teachers' aides in the various schools of the Bureau of Indian Affairs on this reservation in an attempt to somehow upgrade and develop a teaching corps, teaching potential that comes from the Navajo people and that can get suitable credentialing so that perhaps some day they can take over these classroom responsibilities. As I recall, you said only 11 percent of the professional group were actually Navajo. What are you doing in this area?

MR. TUCKER. Okay.

As I give you some ideas, let's begin with the latest program. The Navajo tribal division of education recently got funds under the Title IV to establish a teacher training program for those Navajos who already have 60 hours of college and were desirous of continuing, so that I believe in 2 years going to summer school and also with 1 day off a week from their job, you know, to attend classes, they could be certified to be teachers. Now, that's the latest one.

The Navajo Community College has—

ACTING CHAIRMAN HORN. One day a week off from school?

MR. TUCKER. One day a week off from work.

ACTING CHAIRMAN HORN. From work.

Now, has the Bureau of Indian Affairs granted them that 1 day a week release time?

MR. TUCKER. Let me tell you the memo that when out from my office. I already said we're 190 people short; and when they met with us, I said, you will want them 20 percent of the time perhaps. I think the only thing we can say is, and the memo said this, do everything you can—those are not the exact words—to allow the employee to have this time off to take the training for education. But if the kids are going to suffer because there isn't somebody to take care of them, well, some other arrangements have to be made. Well, one arrangement is to change the shift of the person, for instance, so that I would say there are very few who have not been able to attend this program.

ACTING CHAIRMAN HORN. See, what concerns me here since I went through this bitter experience in California with a minority faculty development program where I was attempting to get members of the black, Mexican American, and other minority communities upgraded with doctor's degrees, and then I had a system bureaucracy tell me I could not release them from their teaching load to give them the time to go to graduate school. Now, is this a rule of the Bureau of Indian Affairs that says you cannot release people from a Government position for this type of activity or do you have the discretion to release people for that type of activity?

MR. TUCKER. As I said, we have the discretion and the desire. That's why we have released them.

ACTING CHAIRMAN HORN. So then this gets down to apparently though, filtered down to each school based on local need and demand for their presence in the classroom?

MR. TUCKER. That's right.

ACTING CHAIRMAN HORN. Do you know—

MR. TUCKER. Or the dormitory, where most of the aides are.

ACTING CHAIRMAN HORN. Or the dormitory.

Do you know to what extent this discretion has been decided at the local level under your jurisdiction in favor of permitting these aides to take 1 day a week to upgrade themselves?

MR. TUCKER. I have no statistics and I believe Dillon Platero can give you that. He's on next and he—

ACTING CHAIRMAN HORN. Well, who do we get the records from as an exhibit here? I'd like to have that information as to how many aides do you have in that category? I assume it's funded, what, Title I funding?

MR. TUCKER. No, this is Title IV.

ACTING CHAIRMAN HORN. Title IV.

How many aides do you have under that program or other—what the layman would call teacher aides, assistants, interns; I don't care how we describe it. How many do you have? What schools are they in? Has the responsible official at that local level given them permission or not to attend programs which I understand are available for the upgrading of their education? And that will be entered as Exhibit 55.

MR. TUCKER. May I modify your request by saying how many of those who qualify for the program, not how many aides. You see what I mean? They first have to meet the qualifications of the tribal division of education program, you see.

ACTING CHAIRMAN HORN. Okay. Fine. Well, let's just so we get a profile, let's get, one, the total number of aides in the system, however geographically distributed; number two, those that applied for the program; number three, those that were accepted for the program; number four, those that were given release time during the week to permit upgrading and if we could do this, not only for this Title IV program but any similar programs which I simply haven't got the imagination to dream up all their Government and bureaucratese numbers at this point. I think that would be helpful.

[The information described, to be marked Exhibit No. 55 for identification, was received in evidence.]

ACTING CHAIRMAN HORN. Now, we had testimony yesterday about the intended joint BIA school next to the Tuba City High

School. I believe you mentioned the superintendency there is vacant as far as BIA is concerned. Am I right or wrong?

MR. TUCKER. A panel member mentioned that.

ACTING CHAIRMAN HORN. Is that true or false?

MR. TUCKER. That's—they were talking about the agency superintendent, not the superintendent of school.

ACTING CHAIRMAN HORN. What I was curious about, since apparently these two schools are going to be built really side by side, and I have picked up somewhere the feeling that we are going to have really two principals but some joint courses. How is that going to work?

MR. TUCKER. Let me give you a brief history of that. A number of years ago when we saw the need for another high school on the reservation and made plans for it, the then public school superintendent—not Mr. Glotfelty, he came thereafter—and our school superintendent, Herbie Jackson, got together and talked about the desirability of not building two of the same high schools and duplicating facilities. For instance, as they pointed out, the Bureau high school would have a band room, music facilities. Therefore, said the public school superintendent, I will build a high school without that and since you don't have in your plans a swimming pool, I will build a swimming pool. Since they are next door the students could go back and forth, you see, and use each other's facilities.

Now, this would appear to everybody--this was a—as was pointed out—the people were contacted: "Are you agreeable to this kind of arrangement?" And they were, and I bring this out because of what Mr. Glotfelty said about—and a comment from the panel, someone here, about two equal principals.

Well, when you make a decision about a big project, any big project, you weigh all the factors and you come out with a plus side and a minus side, and, okay, two equal principals might appear to be on a minus side although they are working together well.

The idea of having both sets of kids going together and mingling and so on and not costing the Government all that extra money by building two separate schools, well, those were on the plus side. Now, you might ask why are two schools being build side by side? There's one reason.

Our boarding school, where we have a boarding school and then there's a public school, we take the kids that are beyond the public school's bus routes. This is a vast reservation and there are any number of kids, high school age, who would have no other school to go but a boarding school, and that's why in many instances we have two such schools side by side.

ACTING CHAIRMAN HORN. Well, I'm just curious why BIA couldn't invest—say, wouldn't it be more economical for BIA to invest in the dormitory facilities and then contract with the

Tuba City district for the educational services? Has anybody analyzed that in terms of the economics?

MR. TUCKER. That has been thought about.

ACTING CHAIRMAN HORN. Well, it's been thought about. Has anybody analyzed it? Are there studies that show the pro's and con's and the economics of it?

MR. TUCKER. No. The position that has been taken in the past is that the public schools will take all or nothing. If they want to educate the kids, then they'll take the dormitory and the school but not just the school alone.

ACTING CHAIRMAN HORN. I'm not quite clear. It seems to me if you build a dormitory in Tuba City right under the nose of the public schools, they are going to have to take those children.

MR. TUCKER. Yes.

ACTING CHAIRMAN HORN. You are just at that point running a hotel, not an educational operation.

MR. TUCKER. I'll agree with you. This is a good possibility.

ACTING CHAIRMAN HORN. I don't know why it isn't just cheapter for BIA to think in those terms and then put the responsibility on the local public school rather than having competing school systems.

MR. TUCKER. To be fair to ourselves I will say that after this Tuba school was in the process, we have talked that should there be need for another high school we would—for instance, in the Ganado area where there is a public school, period, if there was a need in that area or in the Fort Defiance agency we would build a dormitory only, for the kids to go to the public school. But in all honesty too, in the past the policy has been that the public schools want something then they'll take it all or nothing, meaning the dormitories as well as the school, but that's changed now.

ACTING CHAIRMAN HORN. Well, it seems like a strange policy judgment to me.

You've obviously heard the discussion that we began yesterday with some of the school systems as to the need, and I ask this of you as a representative of BIA, in particular who has responsibility for education on this reservation, the need for not simply youth education but adult education, the use of instructional media of one sort or another, radio, television, cassettes come to mind, the long bus rides, all the rest of it.

To what extent is BIA in their educational planning for the Navajo people committed to some sort of outreach program that really gets into the home in terms of both programs of appeal culturally to adults to bring them closer together to their own children and, in the process, upgrading the general educational level of the Navajo people?

MR. TUCKER. At present, and for some time, there has been an adult education program that has not been under our division of education. It's under another branch, and they have had any number of programs in operation based on the wishes of the people of the community and as they had the funds for it.

For instance, if in a certain community, let's say Tuba City, where they have classes, the Navajo people, the men let's say, had a need, felt a need for auto mechanics, they would hire the public high school auto mechanics teacher to teach in his shop these Navajo people.

As for an outreach program, I know of no such—you mean going into the homes and so on—nothing is planned yet on that.

ACTING CHAIRMAN HORN. Let me ask counsel a minute—now, do we have in the record here the organizational tables and charts of the Bureau of Indian Affairs as they pertain to the Navajo Reservation, including the various functions Mr. Tucker just mentioned that adult education isn't handled in his division, it's another division? I think that record ought to be laid out.

MR. GLICK. We don't have it at this time, Mr. Chairman. We'll obtain it.

ACTING CHAIRMAN HORN. All right. Exhibit 56 is a complete organization chart of both BIA and the Navajo Tribe as it pertains to all governmental functions that we have had under discussion and maybe a few more in this hearing.

[The information described, to be marked Exhibit No. 56 for identification, was received in evidence.]

ACTING CHAIRMAN HORN. Now, Mr. Tucker, let me ask you, to what extent has BIA, as their operations pertain to this reservation, got a 5 or 10-year plan as to what is it you hope to achieve by say, 1977, 1982, 1983, whatever?

MR. TUCKER. We don't have a time-line plan. What we—the system we're operating under is, we have a philosophy; we have goals; we have programs to meet the goals, and we have started on an evaluation system which has, I'll admit, been weak. In other words, our emphasis in the past few years has been on inputs of programs.

Look at these wonderful programs we have, and now we're going into a final, or having a full program or system where we are going to have feedback so that, if necessary, we will change or drop programs, change or drop goals and maybe even change or drop the philosophy. You see.

ACTING CHAIRMAN HORN. This feedback will come from parents, youth in the school, teachers, faculty, the whole community which a school is designed to serve?

MR. TUCKER. Definitely. Feedback from everybody, right.

Now, when you say, time-line, I'll give you one example. There have been suggestions or feelings at the Washington level, I believe, that we should set a goal, for instance, we will have three more contract schools by the end of '75. Well, they've discussed that at that level and feel—and I do too personally—that it would be better rather than we make the decision that the contract schools are the answer, that we present options to the people and let them decide what's best.

ACTING CHAIRMAN HORN. Now, my idea of a goal would be that if the average number of years of education completed by the people on the Navajo Reservation is 5 years, compared to 12.1 of the American society generally, my idea of a goal would be to say that by 1977 the Bureau of Indian Affairs will commit itself to see that the average level of attainment is 6 years or 7 years; and what are the cost options, the manpower options, the administrative machinery to attain that goal.

I agree with you on options. I think Chairman MacDonald quite eloquently put his finger on the problem when he said the problem of education on this reservation is the multiplicity of school systems, the States, the counties, the cities, the BIA, the contract schools, the private schools, the whole works. I think that's correct, and now the only way you are going to get at this is to get some joint planning or to get you, as the responsible officials holding the trusteeship and stewardship of the Government of the United States, to figure out where is it this place should be even though your agency might not be the one that gets it there. But what are the responsibilities of the public schools and everybody else around here?

MR. TUCKER. First, I agree with you and between you and me we will be getting into this whole field—I'm sure you know it's called management by objectives and results—

ACTING CHAIRMAN HORN. But too often it's run by budget people with little imagination instead of educators that have some program leadership.

MR. TUCKER. True.

ACTING CHAIRMAN HORN. I just think you shouldn't wait for somebody to dream up a new gimmick to impress a legislative body or the chief executive, but rather that educators ought to be making their own decisions and going out and saying here's what we want to do and here's ways to get there, not just always ask for more money. There's so many more things we could do without more money if we'd just use common sense.

MR. TUCKER. With respect to education of the kids, we will get into that. For instance, by emphasizing the evaluative end of the system we will be seeing just how much progress the kids are making from the beginning of the year to the end, and we will be establishing goals on that basis, saying, if they only gain 4 months this year, let's say next year we want them to have 6 months gain, or 8 months.

ACTING CHAIRMAN HORN. Okay. I'll tell you what I'd like to round out this little portion of our interchange is that Exhibit 57, I'd like to have the budget request for the past 3 fiscal years and the next 2 fiscal years—I assume you already have one in for '74-'75—

Mr. Tucker. Right.

Acting Chairman Horn.—as submitted by the Bureau of Indian Affairs education group responsible for Navajo education. I'd like to know, and you didn't volunteer it so you can reluctantly provide it since you are under subpena—what did you ask for, where were the decisions made at either the regional level, the Commissioner of Indian Affairs level, the Secretary of Interior level, the Director of the Office of Management and Budget on behalf of the President, what was submitted to Congress, what happened in the House of Representatives, what happened in the Senate, and what was the final amount of the appropriation is what I'm talking about. And I think if we just lay that pattern out, let's see, what did you ask for? Did you ask for what should have asked for?

I'd like, if you wanted to add anything else to that exhibit in terms of formulas that guide your budget formulation, often devised by technicians that like to simplify the world and don't understand it, or anything else, why feel free to, but I'd like to get a picture of the budget decisionmaking process.

[The information described, to be marked Exhibit No. 57 for identification, was received in evidence.]

Mr. Tucker. Once more, for past and future, would you say—

Acting Chairman Horn. Well, General Counsel will furnish you the specifics, but I'm just giving them a little guidance at this point in time.

Now, one last question and that gets back to bilingual assessment. I am not as euphoric as some of my colleagues are who are promoting bilingual education. I don't know if it works or it doesn't work, but I'd like to see some hard data, and I guess, Mrs. Spell, I'd be curious, what kind of assessment mechanism is the Bureau of Indian Affairs, either on the Navajo Reservation or nationally, building into its programs, if any, in bilingual education, to see if there is any difference that they make after 5 years.

I'm talking about a longitudinal study instead of these haphazard, half-witted studies that are done on 1 year here and another completely noncomparable district, another study there that mean absolutely nothing as far as I'm concerned. Have we got any studies going?

Mrs. Spell. So far the—most of the evaluation has been a subjective evaluation done by disinterested parties that have come in and—

Acting Chairman Horn. Well, those don't impress me either.

Mrs. Spell. But that is not the thing—

Acting Chairman Horn. It seems to me the Bureau of Indian Affairs and the National Institute of Education, recently created, ought to get down, and they could do the country a real service in this area if you'd get a legitimate, carefully thought-out research study where people aren't just meeting self-fulfilling prophecies. We've got too many researchers in areas of race that just want to prove that everything is good or everything is bad. I'd just like to see some hard data to know does it help.

MRS. SPELL. Well, I would certainly agree with you, and I would hope that we could work up something where we could provide that sort of data for you from the program.

MR. TUCKER. May I offer something here?

ACTING CHAIRMAN HORN. Yes.

MR. TUCKER. Take that CITE program that has been going on for a number of years at a great expense; this year we will develop, write a testing mechanism to see whether the children who have been in that program are learning any more, any less, equal to the kids in the other programs, and we'll make a decision whether to continue it or not.

MRS. SPELL. But you are thinking more in terms of the program that we have in the six schools?

ACTING CHAIRMAN HORN. I don't care which program it is. I just know this Commission has been trying to get decent data for 3 years on the effect of desegregation and busing on children's learning, white, black, you name it, and we have a hodgepodge of studies by people of good will and other will on all sides of the question, none of which are too impressive as far as I, speaking as an individual, am concerned. We have now contracted with the Rand Corporation to finally give us a longitudinal study that will make some sense as a commission.

I would think you as part of a Federal agency with a similar responsibility and stewardship for hundreds of thousands of youth under your jurisdiction ought to be engaged in a similar amount of research because there's no use pouring millions of dollars down rat holes if it doesn't work.

MRS. SPELL. That's right.

ACTING CHAIRMAN HORN. On the other hand, if something could be working, maybe we ought to ask for tens of millions of dollars to get the country off dead center.

Mr. Buggs?

MR. BUGGS. Mr. Tucker, why is it that salaries of teachers in contract schools are lower than those in BIA schools?

MR. TUCKER. I don't know that I know the reason. I only know that I sat from the beginning of the Rough Rock contract school, and we made a contract with them and they agreed to the amount of money that was set forth to them. That's all.

MR. BUGGS. Did they know—was there any dicussion as to whether or not the salaries would be equal with those in BIA schools?

MR. TUCKER. No. And I will say this, that this past year, a couple of months ago, Mrs. Costello, who handles the budget and finances in our office, sat down with Miss Ethelou Yazzie, the present director, for a week in Gallup and went through the total operation of that school and their needs, and we agreed that they need more money in certain areas.

MR. BUGGS. Will they get enough money next year to equalize teachers' salaries?

MR. TUCKER. I would assume so.

MR. BUGGS. Who makes the decision, Mr. Tucker?

MR. TUCKER. The contracting officer. We present the—you know, when you negotiate a contract there are two parties. The Government presents what it would like to see done with a contract school, and the contract school says what it would like to do, and the contracting officer, the head of property in Gallup, does the negotiating.

MR. BUGGS. I suppose that the contracting party determines what teachers' salaries will be and not you?

MR. TUCKER. The little I—well, when I was in it, what we would do would be to say—we would say, in our schools we have this, we have salaries for teachers at this level and therefore there is no reason for them, let's say, to ask for any more. In other words, this is what we could do it for, and, therefore, the contract school ought to be able to do it plus, as we realize now, and not so long ago, they need a certain amount for administrative costs.

MR. BUGGS. Is the amount per capita the same as in contract schools? I mean per capita student as in BIA schools?

MR. TUCKER. Now, this came up in the negotiations this year and I didn't sit in on all of them and I don't know what the decision was or whether Mr. Brandt handled the negotiations on the basis of per capita or line item. I am not familiar with it. Does it cost more per capita for contract schools; is that your question?

MR. BUGGS. No, the question was: Do you provide as much per capita for contract schools as is provided for BIA schools?

MR. TUCKER. All right. This is the way we did it in the past for a number of years and then realized that they needed more. See, we used to say, this is what it would cost us to run that school. Therefore, this is what we will contract for.

Now, we realize that a number of our services are handled by the Gallup administration offices which money is peeled off the top in Washington, you see, for them to operate, and get teachers for us and buy the equipment and supplies we need, whereas a contract school, you see, has to hire people to do that, so they now get a certain amount of money, a certain percent for administrative costs.

MR. BUGGS. Well, are you saying that they get more per capita?

MR. TUCKER. They get more now, yes.

ACTING CHAIRMAN HORN. Well, why don't we just to get this clarified, have Exhibit 58 be the cost per FTE, full-time equivalent student, in Bureau schools, contract schools, for 2 years prior, let's say, to now. Let's say, the last 3 years if you have that data to make some comparison. Just what has been the FTE.

[The information described, to be marked Exhibit No. 58 for identification, was received in evidence.]

MR. TUCKER. Okay.

MR. BUGGS. That's the only question I have.

ACTING CHAIRMAN HORN. Any further questions?

Mr. Glick?

MR. GLICK. Yes, I have some questions, Mr. Chairman, and I'd like to request permission for Mr. Alexander to ask a few quick questions too. But before we do I'd like to correct the record because I was in error when I said I did not have a table of organization chart for the Navajo area. I do, and it clearly indicates that the adult education is the responsibility of the division of community services, not the division of education.

ACTING CHAIRMAN HORN. Right, this is what I understood and I think we should put that in the record. That was Exhibit 57.

MR. GLICK. Fifty-six, sir.

ACTING CHAIRMAN HORN. No, it's 57, but I'll settle that later with the clerk.

Let me say along that line, Mr. Glick, I think we ought to get—we have an Exhibit 38 put in yesterday, presumbably the Federal BIA salary schedule, and the McKinley County schedule. The testimony we have heard repeatedly is that BIA pays its teachers much better than the related public school system. So we asked McKinley County to furnish us that data. I think your input would be welcome on that exhibit and counsel will be following up with you, their charge being that you get all the cream of the crop and they aren't able to get it. I don't know if that's true or false but let's just get the data.

MR. TUCKER. Okay, because I have an example if you would like to hear it. We've had teachers come that we hired and if they go to, like Chinle, where there is a public school next door, the next day they quit and take a job over there because the salaries are higher. But, okay, we'll furnish you the information on that.

MR. GLICK. The question I wanted to ask, Mr. Tucker, is this, back to the bilingual education, bilingual-bicultural education: We've heard testimony from community representatives from five different school districts. These have included teachers, students, and parents, and I'm referring to Gallup-McKinley County, the Window Rock school district, Kayenta, San Juan County, Utah, and Tuba City, and all of these representatives or citizens have indicated that they believe that bicultural-bilingual education is something that is absolutely essential to the education of Navajo children. Yet you indicate that there is a great split among people and that there are many people who do not think this is a good idea.

What I am interested in finding out is, what's the source of your information? Our information has come from these hearings and from interviewing hundreds of people all over the reservation. How do your lines of information come? Do you hold meetings, public meetings, hearings, or what's your source of information?

MR. TUCKER. I'll give you three sources.

One, the one I gave you, Irving Jones having gone last Friday to the bilingual-bicultural conference and reporting back to me what he heard in the Navajo section where there were a certain number of Navajos who were against bilingual-bicultural education.

Number two, up at Sanostee in the Title VII program, in the Title VII program which is to train bilingual-bicultural teachers, Navajos to be those teachers, they are having difficulty getting the Navajo children to be in those classes. Not every class up there is bilingual-bicultural class, and I talked with the Navajo school superintendent that we have up at Shiprock, James Tomchee, about it, and he said he feels that it so happens that the parents in the Toadlena area are members of the Christian Reform Church who are much more assimilated than, let's say, the Navajos elsewhere, and they would rather lean towards not having their kids in that bilingual-bicultural class.

Third, and I told you this when you talked with me at the office—not long ago when they were having a lot of student problems at the Window Rock High School, the Navajo parents and other parents called for a chapter meeting to discuss the thing and it was reported to my wife, who is a teacher in the public school there, by a Navajo teacher who attended, that there were some parents who got up and said, "We don't like the idea of you having hired somebody, a non-Indian to teach Navajo culture and so on, which they have now at the Window Rock High School. This is the responsibility of the parents and we'll do it, we'll teach them a language and culture."

Now, I have given you three instances. We haven't held meetings on it and that is why I say as a principal we will listen to the respective community—and I'll give you another example a little off the subject, but our listening at the Leupp School, there is a strong Christian community and they do not believe in dancing, the kind of dancing that the kids do to the juke box tunes, so there is none of that dancing at that school.

We will listen to the people. Now, this might all be academic in view of the fact that the tribal division of ed, they are making plans to coordinate all these systems. They are making plans to contract any number of things that are going on now and it might all be academic because they may take it all over. I don't know.

ACTING CHAIRMAN HORN. Is that it?

Mr. Alexander?

MR. ALEXANDER. Mr. Findley, I didn't want you to feel neglected so I thought I'd ask you a few questions about boarding schools.

Mr. Findley, how many children ran away last year?

MR. FINDLEY. How many children ran away last year?

MR. ALEXANDER. Last year.

MR. FINDLEY. About 1,500.

MR. ALEXANDER. What's the count so far this year?

MR. FINDLEY. Well, from the information that I could get yesterday we have approximately 1,000.

MR. ALEXANDER. So far?

MR. FINDLEY. So far. This may last from 30 minutes—after 30 minutes they are reportable—from 30 minutes to 3 or 4 days.

MR. ALEXANDER. Most of the children in the boarding schools, for the record, are below high school age. I believe 118,000 of your, approximately of your students are below the high school age, according to the records of your office? 18,000, I'm sorry. Is that correct?

MR. FINDLEY. Close to it.

MR. ALEXANDER. You mentioned earlier that you are increasing community input in your boarding schools. Could you please explain to me what that means? Do parents now come regularly to visit their children at the schools, are access roads systems being developed by recommendations through the hierarchy through BIA? Just what all are you doing?

MR. FINDLEY. For parental involvement?

MR. ALEXANDER. For parental involvement.

MR. FINDLEY. Well, there's been several programs in the last 2 or 3 years where parents have worked in the dorms under certain tribal-sponsored programs, the CEP [Concentrated Employment Program] programs, and some of these kinds of work programs.

MR. ALEXANDER. Aside from formal programs, is it a standard policy of BIA that parents are invited and welcome to visit their children at dormitories and at the boarding schools or is it frowned upon?

MR. FINDLEY. They are invited.

MR. ALEXANDER. They are invited?

MR. FINDLEY. At all times.

MR. ALEXANDER. How is that communicated?

MR. FINDLEY. Pardon?

MR. ALEXANDER. How is that communicated? Is it on the Navajo radio station periodically?

MR. FINDLEY. Well, we have parents' day, and we have some programs in Navajo on the radio telling the parents to come visit the schools, come see their children, their children are lonesome for them, they still care for them, don't you still care for your children, almost to that effect. Come and see them anytime.

Now, this is not always— Ten years ago when I came to the reservation this was not the case. The parents were not welcome, especially in the dormitory.

MR. ALEXANDER. We've heard considerable testimony from parents and from interviews all over the reservation, I gather we have, perhaps, a problem that Mr. Tucker may have, in that, presumably, we could pick the parents we want to listen to in specific incidents, that parents feel unwelcome at schools generally and at BIA boarding schools particularly, which many of them went to and have as you know, as the chairman stated on Monday, and as innumerable people have stated to us throughout the reservation, very, very harsh memories from the twenties and the thirties of life in boarding school. I'm talking about an affirmative action program to overcome the resistance of the community.

MR. FINDLEY. We have counselors and aides talking to parents every weekend that come in and encouraging them to come more often, to send their children letters, to send them money so they are not stuck in—

MR. ALEXANDER. Send them letters?

MR. FINDLEY. Letters.

MR. ALEXANDER. What is the literacy rate on the reservation?

MR. FINDLEY. Pardon?

MR. ALEXANDER. What's the literacy rate amongst the older people on the reservation?

MR. FINDLEY. I don't know.

MR. ALEXANDER. It's very low.

MR. FINDLEY. But a lot of them can write letters.

MR. ALEXANDER. Mrs. Spell, just one thing for clarification for the record. You've used English as a second language and bilingual education almost interchangeably in your discussion, and I gather you do have a master's degree in this area. Is there, in fact, a fairly substantial difference between the goals of English as a second language and bilingual and bicultural education?

MRS. SPELL. I think you have to define what you mean by bilingual-bicultural education. If you are talking about bilingual—and I'll just use the term "bilingual education," where initial reading is in the Navajo language and where reading and writing are taught initially in that—

MR. ALEXANDER. Yes, educators have reported to me and to others that bilingual-bicultural education is the ability of the child to speak, read, and write in both languages throughout their school career and following through on their adult life. As I understood it—I would like to be corrected if I'm wrong—English as a second language is designed to teach non-English-speaking children to speak English, regardless of what happens to any fluency they may or may not retain in their native tongue.

MRS. SPELL. I would say the difference in the two—I would divide the programs—let's say that the bilingual program is the one in which a great deal more stress is put on the first language and that they, as you say, learn to read and write in both languages.

There are other programs, let's say this is teaching the language arts to children for whom English is their second language, that here use is made of the Navajo language from an oral standpoint and for concept development and to bring understanding to English, but there is more stress on teaching English than on teaching Navajo.

MR. ALEXANDER. So the Navajo teacher aide in this situation is used where the child does not understand in English?

MRS. SPELL. To bridge the communication gap.

MR. ALEXANDER. This would be different.

Were you here when Mrs. Tsinajinnie from Rock Point testified about what her role in the classroom was?

MRS. SPELL. Yes.

MR. ALEXANDER. This is very different from what she said.

MRS. SPELL. It is very different because they use two teachers. They have their Navajo language teacher and their English language teacher which is a different kind of program than we have.

MR. ALEXANDER. Thank you.

ACTING CHAIRMAN HORN. Has counsel concluded?

MR. ALEXANDER. Yes, sir. Thank you.

ACTING CHAIRMAN HORN. When we started with this interesting panel we were 7 minutes behind. We are now 7 hours and 7 minutes behind our schedule, so we've obviously elicited a substantial amount of information from you. We're grateful that you would spend this time with us. Thank you for coming.

Let me make one announcement before the Commission takes a short break, and I would like Dr. Billison to translate this when I'm done with the announcement. As we announced on each of the days of this hearing there will be a public session, the first in the history of the Commission at which anyone can testify, once we conclude the two remaining panels. After the break we will have an overview of the Bureau of Indian Affairs by Mr. Lincoln, the area director, who will be followed by Dillon Platero and Joy Hanley of the division of education, Navajo Nation.

We will then have another slight break, since the Commissioners have to agree upon the concluding statement and that will be followed then with a maximum of a 2-hour session at which any individual is free to comment on the subjects under the jurisdiction of the Commission and that we're working on in this series of hearings.

May I suggest that at this break all people who wish to so comment in the open public session gather over here on the left side of the room near those bleachers and there will be representatives of our Office of General Counsel who will meet with you to get your name so we can take you on a first come, first served basis and to explain to you what the situation and the ground rules are, so to speak, for that portion of this hearing.

Now, Dr. Billison, if you will translate that, I will recess this session until 5:30. And please translate it.

[Translation into Navajo.]

ACTING CHAIRMAN HORN. Just for the benefit of the audience the Commission is going to maintain a recess for another 15 minutes to work over a document here. So make yourselves at home. We'll be back with you shortly.

ACTING CHAIRMAN HORN. All right, the session will resume and I'll swear the witnesses, if you gentlemen will stand. I think, counsel, since we might ask you some questions, let's swear both of you.

[Mr. Anthony Lincoln and Mr. Barry Berkson were sworn and testified as follows.]

TESTIMONY OF MR. ANTHONY LINCOLN, WINDOW ROCK AREA DIRECTOR, BUREAU OF INDIAN AFFAIRS; AND MR. BARRY BERKSON, OFFICE OF THE SOLICITOR, DEPARTMENT OF INTERIOR, ALBUQUERQUE, N.M.

ACTING CHAIRMAN HORN. Please be seated.

Mr. Glick.

MR. GLICK. Thank you, Mr. Chairman.

Gentlemen, will you both for the record please state your names, your addresses, and your occupations.

MR. LINCOLN. Yes. Anthony Lincoln, Window Rock, Arizona, area director, Bureau of Indian Affairs.

MR. BERKSON. I am Barry Berkson, Office of the Solicitor, United States Department of Interior, Albuquerque, New Mexico.

MR. GLICK. Thank you. And I assume that you will be testifying only to matters within the area of the Office of Solicitor, Mr. Berkson?

MR. BERKSON. Sir, that was one of my questions before I came up here. I have no idea as to what you want.

ACTING CHAIRMAN HORN. Well, I'm afraid I'm the one that got you into this. Apologize to your superiors; just say I roped you into it, but I thought we ought to swear you, since there might be some questions on legal procedures and how paper flows and consultation process between Solicitor of Interior, Commissioner of Indian Affairs, region, field, that we might call on you. We might not. But let's play it safe.

MR. BERKSON. As I recall, Mr. Horn, I think you indicated that you might want to ask some questions in regard to the Johnson-O'Malley laws as they affect school boards and the rights of the Bureau of Indian Affairs to contract and this sort of thing.

ACTING CHAIRMAN HORN. Sure. Mr. Glick will pursue that.

MR. BERKSON. And I'll be happy to testify in that regard.

MR. GLICK. Mr. Lincoln, how long have you been the area director for the Navajo area?

Mr. Lincoln. Approximately 3 years.

Mr. Glick. And before that could you give us a brief statement of your employment history so we could fit you into that time context?

Mr. Lincoln. Sure. Before that I was Acting Associate Commissioner for Education and Programs in Washington, D. C. My official title was Deputy Associate Commissioner for Education and Programs.

Prior to that I was with the Navajo Tribe, employed as director of economic development. Prior to that I was was the office of Navajo economic opportunity, and there I sat in several chairs and wore several hats.

Prior to that I was with the State of Arizona, first with the Arizona State University in a staff capacity as a contracts and training and technical assistance specialist. Prior to that I was with the Governor's Office of the State of Arizona in the contracts division under the antipoverty programs, and after that it gets kind of foggy.

Mr. Glick. Okay. Am I correct in my assumption or my knowledge that you are the first Navajo to be area director of the Navajo area?

Mr. Lincoln. That's correct.

Mr. Glick. Thank you. Now, Mr. Lincoln, there has been repeated reference to the President's July 8, 1970, special message on Indian affairs which called for the policy of Indian self-determination. Can you tell us how you personally interpret that? What does that mean to you in terms of what the future should look like?

Mr. Lincoln. If I can give a personal indication on that, I certainly would welcome the Commission's indulgence on this because my personal opinions may not be necessarily my official opinions.

Acting Chairman Horn. We'd like to have your personal opinions.

Mr. Lincoln. Okay. I appreciate that.

I feel that self-determination means the opportunity to seek and follow whatever the various channels of opportunity may be and to have the freedom to choose whatever that process may be to better one's self and his environment at his own choice. I think if we were to put it in a nutshell, I think that would be my personal opinion of what, basically, self-determination means. Along with that, of course recognizing that with this one must realize that there's a responsibility to insure that that pursuit of a personal interest doesn't infringe on another's, and I guess that would be my personal opinion on that.

Mr. Glick. Well, raising that, your description, to an institutional level from an individual level, how would you interpret that then?

MR. LINCOLN. To an institutional level, I think what we are talking about is again the availability of alternatives from which choice can be arrived at and not a directive sense of choice but a free sense of choice based on one's own atmosphere of knowledge, let's say, whatever that might be.

MR. GLICK. Does the picture that you presented—your interpretation—coincide with that which is officially stated and it must be in some way or other by your superiors at the Bureau of Indian Affairs in Washington and by the Department of Interior?

MR. LINCOLN. I think so.

MR. GLICK. Have there ever been policy discussions in which you participated with officers of BIA and Interior to determine how this should be interpreted?

MR. LINCOLN. Yes. I think that perhaps maybe the full extent of my interpretation may not have always been recognized.

MR. GLICK. Have there been any steps taken by your office to implement your view on the reservation?

MR. LINCOLN. Yes.

MR. GLICK. Could you describe this for us?

MR. LINCOLN. Well, there are many and I think first of all, the idea of making the pronouncement or by interpretation of policy based on, let's say, my individual interpretation—I think is basically the significant step—and this has been related to the Navajo Tribe and I think has been demonstrated in correspondence and communication, let's say, with the Navajo Tribe.

MR. GLICK. Has it been implemented in any way by turning over some of the functions?

MR. LINCOLN. Yes.

MR. GLICK. To the tribe?

MR. LINCOLN. Yes. In the past there has not been the number of contracts that we have presently under, that are being handled by the tribe of which they have control of. We've heard about some contract schools and, if I might relate one, I think that the publicity was well based and the subject of the Rough Rock contract, and it was a case where there were some problems and I think it's well for me to relate to the Commission that it was my choice to see that the Rough Rock School was not closed, to insure that funding was continued because I think there's a real value in that.

I think that sometimes the administrators such as myself have to put ourselves in a position of treacherous interpretation, if you will, and I can assure you I have found myself in that position many times.

MR. GLICK. It's been my understanding that your office has proposed that the tribe take over many other functions from BIA?

MR. LINCOLN. That's correct.

MR. GLICK. And how has the tribe responded to that proposal?

MR. LINCOLN. I think the tribe has responded very well, and I don't mean to avoid the question as such because I think the tribe is responding in a way that it should respond if I can use a little bit of personal judgment on this. They are responding very carefully. They are responding, I think, in a sense of review which I think they should respond in. A response of examination.

At this point the overriding atmosphere has been one of, I think, an attitude of favorably considering these approaches and using the contract atmosphere and let's say, the contract school atmosphere as a separate category, as an experience indicator, if you will.

MR. GLICK. Well, assuming that the tribe determines that it wishes to perform a number of different functions in education, in road maintenance, in whatever it might be, that are now performed by the BIA, either under contracting or some other device, and you agreed with that, would you have the authority at your office level to make the decisions to turn over these functions to the tribe and to allocate the resources to it, or would this decision have to be made at the Washington level?

MR. LINCOLN. I think that the decision probably would have to be made at the Washington level and, if I can relate an incident which would give you a basis for my answer, I would represent that when the suggestion was made to the tribe that they consider taking as many of the program areas as possible my superiors reacted such that there are many facets that have to be dealt and contended with before the issue is really decided upon. So I would presume from that exercise that Washington would feel that they would be the ones that would rule on such a decision.

MR. GLICK. What kind of a time frame would this take?

MR. LINCOLN. Well, that's rather a difficult question to respond to. I don't know. I think principally, though, the time frame is representative of the philosophy I stated in my personal impressions of self-determination. Whenever it is they want to do it.

MR. GLICK. So that essentially decisions are not made on the scene but are made 2,500 miles away in Washington that are really fundamental policy and theoretical decisions?

MR. LINCOLN. I'd have to agree with you on that, yes.

MR. GLICK. It's our understanding that the tribe has a 1973 budget of $28 million. Just for comparison, what is the total budget that your office controls?

MR. LINCOLN. In 1973 it was somewhere in the neighborhood of $110 million.

MR. GLICK. Is that divided up pretty much in terms of salary for BIA officers and staff, education, road maintenance, and things of this nature?

MR. LINCOLN. That's correct.

MR. GLICK. And there is some assistance, public assistance, Indian public assistance, is there not?

MR. LINCOLN. I didn't—

MR. GLICK. Well, isn't there some public assistance that BIA provides?

MR. LINCOLN. I don't understand what your question is.

MR. GLICK. Okay. Welfare payments to be precise?

MR. LINCOLN. Oh, yes, I can understand it now.

MR. GLICK. Okay. The tribe now has the responsibility of trying to promote industrial development and business development. How long has that been part of the tribe's function?

MR. LINCOLN. I think— Well, it's a very difficult question to answer too. If we're talking about the program that the Bureau of Indian Affairs had which it used to call industrial development, then that's been for a little more than a year, but I think the Navajo Tribe has always had the responsibility of approaching industrial and economic development and I think it's done a pretty remarkable job in trying to do it. So that is, I think, the way I'd answer your question.

MR. GLICK. Mr. Lincoln, I'm sure that you've seen the 10-year economic development plan of the tribe and the plan has some very grand ideas that requires some immense resources all the way from building a modern nation infrastructure of roads and communications to attracting tourists and things of that nature. And it requires, if I remember, $50 million or $100 million, but just immense amounts of money. What do you think of the possibility of these kinds of resources being obtained and what do you think generally about the—what that 10-year plan calls for?

MR. LINCOLN. Well, first of all, I think the 10-year plan certainly is a most ambitious plan and the likelihood of obtaining those kinds of resources is, I think, a real difficult question to answer. And it depends on the situation and circumstances of the times, I think.

I think there was a time in this country's past when the Federal Government would have readily bought something like that. With the times today in terms of the squeeze of money and the nonavailability of such monies to do exciting things, you know, we saw the time of the great society and I think if such a plan were to come along at that time perhaps it might have been funded. Today with the tightness of money, I wonder, and probably it would be very difficult.

MR. GLICK. What do you think the BIA could do to promote the 10-year plan? I mean, what process ought to be followed to bring that to the attention of people who can make the decision, whether to or whether not, and what could your office do on that?

MR. LINCOLN. Well, I think the thing that BIA could do, first of all, would be to examine the process of priorities and to, like has been indicated by the chairman of the Navajo Tribal Council, to work towards a definitive purpose, if you will. And I think if we can look at the 10-year plan as being a case of definitive purpose, then I think the BIA can be looked at as a point of resource then to assist in the development of this package.

But, again, you know, it comes down to the lack of money. The BIA has not been development oriented, at least to an extent that I think it should be. The processes of Government, in terms of the allocation of monies and the unavailability of money, makes it a difficult situation because the greatest proportion of our money is in education, and very, very little—a too small amount, as far as I'm concerned—is available in the sense of development.

And, of course, I want to answer your next question which follows from that, is what have I done about it? I've gone and I've—for the past 4 years that I have been associated with the BIA, I've made some pretty demanding statements before our internal budget review process to try and reorient the budget activity of the BIA so that it has a little better attitude in terms of a development process.

MR. GLICK. Have you had any success in that respect?

MR. LINCOLN. No. I haven't.

MR. GLICK. So that should I conclude, then, that policymakers in BIA, in Washington, are not willing to carry a plan like this to the Office of Management and Budget or its equivalent in Federal Government?

MR. LINCOLN. I'd have to say, and I don't mean it facetiously, that has to be your conclusion.

MR. GLICK. That has to be my conclusion. Okay.

One thing that I have noticed, Mr. Lincoln, just from talking to people here and visiting your offices, there are a number of unfilled senior staff positions in the agency. For example, a witness, Mr. Tucker, who is acting chief of the division of education, is only acting. And I understand that that has been for some time. And I believe there are some other senior positions like that. Is there any particular reason why they are not filled? Is it budget or whatever?

MR. LINCOLN. You are asking a very difficult question, but I'll answer it. In the choice to give the Navajo Tribe the options that I think it should have in making a decision or a determination, whether it should pursue, if you will, the takeover—and there's been various connotations put on that—of BIA activity—a hindrance to a lot of this has been the high level or senior level positions being filled.

And the way you—you know, as some people have described it, I'm a maverick in the system because I'm the youngest area director. I'm the one with the least tenure in Government service that has been able to get to a senior level position.

So what I'm representing by that is that throughout the Bureau of Indian Affairs you will find people who have been in GS-14 and GS-15 type jobs or those that, you know, would be a hindrance to the tribe really having an open mind to examine some of the possibilities, people being there for many, many years that don't really want to give up their jobs. And many times I have seen in the past where maybe some of the advice that has been given by this attitude is one which would tend to lead away from that kind of decision or the opportunity to make such a decision.

And, very frankly, that's why I have left it open, is because education is a large part of the Navajo concern and problem; that in reviewing whether they want to take it over or not I don't want some high-powered bureaucrat, if you will, sitting in the way of such a decision.

So that's my answer.

MR. GLICK. So what you are suggesting is that the implementation of the concept of self-determination may be blocked by persons with great seniority and high-level positions—

MR. LINCOLN. Certainly.

MR. GLICK.—who are threatened by that concept?

MR. LINCOLN. Exactly. We both come from a pretty sophisticated bureaucracy. The BIA is an old, established, old-line bureaucracy, and I think the Commission, as young as it is, I think has certainly got some strained lines of bureaucracy in it.

MR. GLICK. We're not too sophisticated, too.

ACTING CHAIRMAN HORN. We're beginning to creak a little, though, so I know the feeling.

MR. GLICK. I would like to, if I could, Mr. Lincoln, get over to the question that was raised before that Mr. Berkson might help us with, and that was—the question was really whether the BIA could contract with the tribe, whether the tribe was an entity to which BIA could contract all of its educational functions on the Navajo and whether there are any legal prohibitions against that, or is that a policy decision that the Secretary, or whatever level, could be made?

MR. BERKSON. I think there are some real tough legal problems that would have to be resolved.

First of all, a lot of the Federal legislation in regard to Indian affairs that I've been involved in from time to time is very old. A lot of the enactments were enacted before the turn of the century, and we still have these laws and we are trying to, in many cases, to fit them in to the needs of the Indians today.

For example, the tribal direction of Federal employees, the law that is referred to quite a bit, when you get into this thing, you find that it was passed on June 30th, 1834. Now, this is one of the laws that we have to try to use to enable school districts on the Navajo Reservation to contract—well, not to contract, but to direct the employment of Federal employees; in other words, school teachers and Federal school personnel.

This is the only thing that we have to go on. For instance, there are some schools that want the power to do this, in addition to the power to contract. I'll get into the laws on the contracting in just a second. But this particular one, I would like to read it to you. It was passed in 1834. This says:

"Where any of the tribes are, in the opinion of the Secretary of the Interior, competent to direct—" Now, it doesn't say the employment of teachers, or the employment of Federal civil servants. It says: "—to direct the employment of their blacksmiths, mechanics—"

Excuse me. I have to go back. It does say teachers here.

"—teachers, farmers, or other persons engaged for them, the direction of such persons may be given to the proper authority of the tribe."

But I passed over some additional problems when I read that, and that is, the tribes, for one thing, have to be, in the opinion of the Secretary of the Interior, competent to direct the employment. As you know, there's been a lot of civil service laws and civil rights laws written since this, that—and to make this more of a maze of complexities, there's no court decisions that I know of that interpret this with respect to the problems of today. And as you know, we lawyers have to look to court decisions to be able to give sensible interpretations.

So we are looking at an 1834 law that was passed, not in these times, but in a far drastic period of our history—

ACTING CHAIRMAN HORN. Excuse me, counsel. Do I generalize from that and hear correctly that that 1834 law says that at the discretion of the Secretary of the Interior, if he feels the tribe is competent to carry on those functions, so listed, teacher, farmer, blacksmith, that he can turn over the responsibility?

Go ahead.

MR. BERKSON. I'm not quite certain of that yet.

ACTING CHAIRMAN HORN. I'm trying to keep it clear.

MR. BERKSON. And this is part of it. The Secretary has to make the decision, first of all—

ACTING CHAIRMAN HORN. Excuse me. You say that is an 1834 law?

MR. BERKSON. It's an 1834 law, yes, sir.

ACTING CHAIRMAN HORN. That must have been referred, originally, to the Secretary of War because there was no Secretary of the Interior then. So I assume that's when the Army had responsibility or what?

MR. BERKSON. Well, I'm not—

ACTING CHAIRMAN HORN. Okay. Could you give us the full citation for the record sometime so we can check it.

MR. BERKSON. This was codified in 26 U.S.C. Section 48, and it's contained in 4 Stat. 737. We're concerned with this right now, as a matter of fact, in the problem over whether some of the school boards on the Navajo Reservation can direct, actually direct the schools. Now, contracting is another thing, as I said. But this is whether they can direct Federal employees.

Now, as I said, it takes an opinion of the Secretary—it takes the discretionary opinion of the Secretary of the Interior as to whether, first of all, a tribe is competent. It doesn't say "school board" either. It says "tribe." Then it says, after all of this, all of the satisfaction of the Secretary is finished, it says: "The direction of such persons may be given to the proper authority of the tribe," which, in our minds, means that the tribe has to also consent.

So what we are looking at on a school board situation is, first of all, it would have to be given the authority to do this, to direct Federal employees by the tribe. These school boards are not tribal entities, and this is another complex field, is what kind of—what kind of entity is it? Because this comes into play on the Johnson-O'Malley law which says that it doesn't give a specific authority to contract with tribes on education funds for Indians.

For instance, the Johnson-O'Malley says that: "The Secretary of the Interior is authorized in his discretion to enter into a contract or contracts with any state or territory or political subdivision thereof—" While I'm reading this, I imagine that we'll see if the Navajo Tribe fits in here, but—

MR. GLICK. Could I just interrupt for—

MR. BERKSON. —see if the school district really fits in here, first.

MR. GLICK. Could I interrupt for just a minute, Mr. Berkson, to ask whether any of the administration's proposed legislation relating to Indians would cure the problems that you see?

MR. BERKSON. Very definitely, and this is what my big point is. I think in the testimony that was brought out here earlier there were some persons who had a tendency to oversimplify Indian laws with respect to whatever answer they wanted to come up with, whatever was convenient. It's a very complex field of law. The whole gamut of Indian laws is complex; primarily, as I said before, much of them that we deal with were enacted before the turn of the century in different times, and we're trying to use these old laws in today's times.

And we do our best to try to salvage what we can and utilize them, but we really run into some tremendous problems. And I think that these laws with respect to contracting and direction of Federal employees, I think they all need to be brought up to date. We need some clear legislation. And this is my point because I think if you give me about 2 hours to fully explain this, I think you'd be more confused than I am right now.

MR. GLICK. Do you know whether the Solicitor of Interior has directed any research or any memoranda to be written to see whether there isn't some interpretation of that particular statute you were referring to which might permit—

MR. BERKSON. Yes. Yes. He— We had a long conference telephone call with some of our people in Washington about this, and we have an opinion now that sets forth guidelines as to how we can accomplish it with these old laws. But we have to tell the BIA that there aren't any court decisions on it, and if they do it and if the tribes do it and if the school districts do it, there's probably—there's a risk involved in the thing being declared at some time void or illegal.

MR. GLICK. When did this—

MR. BERKSON. But we do have an opinion that says it can be done and it has the limitations and indicates exactly under what conditions these things can be accomplished.

MR. GLICK. When was this written, Mr. Berkson? Was that recently?

MR. BERKSON. I don't—I didn't know you wanted to ask that from me or I'd have a copy of it right here.

MR. GLICK. Well, may I ask if—

ACTING CHAIRMAN HORN. Well, I was wondering, was it transmitted to the Commission of Indian Affairs?

MR. BERKSON. Be very happy to.

ACTING CHAIRMAN HORN. No. Has it been transmitted to the Commission of Indian Affairs?

MR. BERKSON. Oh, yes. It has.

ACTING CHAIRMAN HORN. All right. So let's enter that, as well as the text of the law referred to in this colloquy as Exhibit 59. Is that all right, Counsel?

MR. GLICK. Yes.

[The documents described, to be marked as Exhibit No. 59 for identification, were received in evidence.]

MR. GLICK. I will advise you where to send it to, Mr. Berkson.

MR. BERKSON. Thank you.

MR. GLICK. So the upshot of it is when, I guess, that the state of the law is very much confused and hard decisions have not yet been made on interpretation of the law and that there are some risks in moving in any direction. Well, I think that is a helpful testimony.

I would like to return to Mr. Lincoln for one more question. Yesterday we heard testimony from Robert Dudley, division chief of BIA planning, design and construction office in Albuquerque, and from Thomas Brandt, chief of the Navajo area property and supply branch in Gallup. Both of these gentlemen indicated that their efforts in enforcing the Indian preference clause and/or Navajo preference clause were not too extensive. I wonder whether there is anything that you could do in your capacity as area chief to encourage them to enforce those clauses.

MR. LINCOLN. Well, again, you put me in a difficult position, because I think we're—I think what's being done and what's being accomplished is being accomplished because I've done it. And maybe if we hadn't pushed this hard as we've pushed, we wouldn't have even gotten this far.

I think the enforcement aspect of some of these more favorable positions becomes a little difficult and that happens because of the lack of appropriate manpower. There's a big staff in the BIA, but there's a very small staff in contracts administration.

MR. GLICK. Do you have any administrative authority over either of those gentlemen?

MR. LINCOLN. I didn't understand that.

MR. GLICK. Do you have any administrative authority over either of the gentlemen that I mentioned, Dudley and Brandt?

MR. LINCOLN. Not over Dudley, but over Mr. Brandt, yes.

MR. GLICK. So that, in other words, you could require him to enforce the clause. But in order to do so you would have to provide him with resources, I assume?

MR. LINCOLN. That's correct.

MR. GLICK. Well, in order to do that would you have to go back through Washington?

MR. LINCOLN. Yes.

MR. GLICK. And then come back down to the area level?

MR. LINCOLN. Yes.

MR. GLICK. And I assume you would have to do the same thing with Dudley.

MR. LINCOLN. Well, Dudley comes under the administration of the Washington office, and he's assigned in Albuquerque.

ACTING CHAIRMAN HORN. Well, excuse me. I don't want to leave this without making it very clear. Are you saying that in order to allocate one of the positions under your jurisdiction, as area director, to this contracts compliance group, which is under your jurisdiction, you would have to go all the way to Washington to get a transfer of that position?

MR. LINCOLN. That's true.

ACTING CHAIRMAN HORN. I am in a fairly—

MR. LINCOLN. You see, what I can do basically is everything we can—First of all, we can do it on a temporary or an interim basis.

ACTING CHAIRMAN HORN. On a year basis?

MR. LINCOLN. On a year basis.

ACTING CHAIRMAN HORN. Right.

MR. LINCOLN. But, you know, whether I'm going to get that on a continuous basis is a different matter. But I could.

ACTING CHAIRMAN HORN. Okay. But that is another thing I want to get to. You could assign on a temporary basis—

MR. LINCOLN. Yes, I could.

ACTING CHAIRMAN HORN. —some additional help over there.

MR. LINCOLN. Yes.

ACTING CHAIRMAN HORN. Because, as I said, I've run a bureaucracy, too, and I have the same problem—

MR. LINCOLN. Right.

ACTING CHAIRMAN HORN. —but we sure move a few people around, despite the line item budget.

MR. LINCOLN. And from the positive—And from a positive standpoint, we are doing that. We're getting—We've just been through a pretty extensive look-see at ourselves in that line, and I think I can favorably say that we're doing to be moving towards that effort is to reassign what staff we do have to try and approach this effort on an overall basis.

MR. GLICK. Well, even without assigning more personnel, wouldn't it be possible for you to require Brandt to furnish you with written records of the employment—

MR. LINCOLN. Sure.

MR. GLICK. —practices of the contractors?

MR. LINCOLN. Certainly.

MR. GLICK. This would not be a difficult thing, I would assume.

MR. LINCOLN. No.

MR. GLICK. Mr. Chairman, I have no further questions at this time.

ACTING CHAIRMAN HORN. Counsel, are you concluded?

MR. GLICK. Yes.

ACTING CHAIRMAN HORN. Commissioner Rankin.

COMMISSIONER RANKIN. The last 3 days I have been saving up to ask you questions, Mr. Lincoln. But, now, here it comes late in the third day, and I'm tired and not very bright. So I don't know whether my question will be—are worth asking now. I have got one or two questions that I still want to ask you. Would you say that you are a middleman between the Navajo Nation and the BIA in Washington?

MR. LINCOLN. I don't know your use of the word "middleman." How—

COMMISSIONER RANKIN. Well, does everybody have to go through you in order to go to Washington, to the BIA agency?

MR. LINCOLN. No, sir.

COMMISSIONER RANKIN. Mr. Tucker could go directly to Washington, could he?

MR. LINCOLN. Yes. And he has.

COMMISSIONER RANKIN. And he has.

MR. LINCOLN. Yes.

COMMISSIONER RANKIN. Well, outside, in the tribe, could the members of the Tribal Council or the chairman go directly to Washington and bypass you?

MR. LINCOLN. Certainly.

COMMISSIONER RANKIN. Has it been done?

Mr. Lincoln. Yes, sir.

Commissioner Rankin. Do you work well with him?

Mr. Lincoln. Yes, sir.

Commissioner Rankin. Well, when I say I am also wondering about Washington, we always use general terms, "they," or indefinite pronouns. Do you have a liaison officer in Washington who works with you? When you call Washington, do you call for a specific man? Or do you call just anybody in general up there?

Mr. Lincoln. Just call a specific man.

Commissioner Rankin. You call the same man each time?

Mr. Lincoln. Not all the—

Commissioner Rankin. About how many—

Mr. Lincoln. Well, it depends on the problem.

Commissioner Rankin. All right. Tell me.

Mr. Lincoln. What are you getting at? I don't understand your question.

Commissioner Rankin. What is the problem? Do you mean an economic problem, a school problem, a budgetary problem, or something like that, it depends on the nature of the question?

Mr. Lincoln. Yes. That's correct.

Commissioner Rankin. And how many—are there a dozen or 100 people up there that you call or not? I'm interested in these—all day I have listened to, "We call Washington. We call Washington." And everytime I get to Washington, why, there just seems to be millions of people running around there, all with Government jobs.

[Laughter.]

Commissioner Rankin. And I'm trying to find who you call, don't you see?

Mr. Lincoln. Well, you know, I've been with the Government for 4 years now and I still haven't figured it out.

Commissioner Rankin. So we can improve lines of communication? That is what I am getting at.

Mr. Lincoln. Exactly. I agree.

Commissioner Rankin. And we should, isn't that right?

Mr. Lincoln. And we should. Now, up to this point, we don't have a Commissioner of Indian Affairs. We, supposedly, have an Assistant Secretary or an Assistant to the Secretary for Indian Affairs.

Commissioner Rankin. Did you ever make out a statement, ever write it out, even just for yourself alone, for nobody else, what you would like to have in Washington insofar as the governing of Indian affairs is concerned?

Mr. Lincoln. [Laughter.]

Commissioner Rankin. Try it sometime for size.

Mr. Lincoln. I've done it.

Acting Chairman Horn. Are you asking, Commissioner Rankin, for the "Lincoln tapes" or what?

[Laughter.]

COMMISSIONER RANKIN. I would like to see the "Lincoln tapes," that is correct.

Well, one other point, and I know time is flying. In talking with the doctor from Shiprock here the other day, he mentioned the fact how he had a man come down from Washington, and when he did and saw the need and everything else, he did a little bit better in Washington. Is it hard to get these men to come down to the Navajo nation or do they love to take trips?

MR. LINCOLN. Well, they'll come to Washington—they'll come from Washington, I believe, to the Navajo.

COMMISSIONER RANKIN. Do you ask them to come?

MR. LINCOLN. Yes.

COMMISSIONER RANKIN. And they do come?

MR. LINCOLN. They come.

COMMISSIONER RANKIN. Does it do any good at all?

MR. LINCOLN. Very seldom.

COMMISSIONER RANKIN. Well, what kind of pressure can you put on them? Absolutely none?

MR. LINCOLN. Well, luckily, the Good Lord endowed me with a pretty good frame and and a little bit to go with it, and that's really the only pressure I've been able to use.

[Laughter.]

COMMISSIONER RANKIN. Well, I will stop my questioning. I have a whole list here, but because I know the other Commissioners want to ask questions—But I do think we could improve this relationship between the office in Washington and the field offices; better communications, quicker action, more sympathetic treatment, more understanding of the problem. If we could clear these things up, we could go a long way to solving some of these problems that we have been discussing here the last 3 days.

MR. LINCOLN. I agree with you.

COMMISSIONER RANKIN. Thank you, Mr. Lincoln.

MR. LINCOLN. Thank you, sir.

ACTING CHAIRMAN HORN. Well, I hope Commissioner Rankin returns with some of his other questions. But he put his finger on exactly the question I was going to ask, so I am going to intrude myself and follow up on that, if I might.

He is precisely correct. We always say "Washington this-and-that." And Washington's reality, as somebody once said in the Second World War when they analyzed the appropriations process of the Congress, it really was not the "Senate appropriations process" or the "Committee on Appropriations," reality was a somewhat grizzled chairman and a maybe somewhat tired ranking minority member and the professional clerk sitting at the end of the table. That was the "Senate appropriations process."

Now, let us get back to how the Bureau of Indian Affairs bureaucracy works. You, as an area director, who do you directly report to?

MR. LINCOLN. At this point, it's—or, at this point in time, let's say it's Marvin Franklin, who is the Assistant to the Secretary for Indian Affairs.

ACTING CHAIRMAN HORN. If they had a Commissioner of Indian Affairs, you would report directly to him—

MR. LINCOLN. I would report to—

ACTING CHAIRMAN HORN. —in terms of your line authority?

MR. LINCOLN. That's correct.

ACTING CHAIRMAN HORN. The way you started out that answer, I was sort of reminded when the Pentagon was undergoing change, somebody said, he left a note and said, "If the boss calls, get his name."

[Laughter.]

ACTING CHAIRMAN HORN. And I think sometimes we have those problems.

But the reality is you cannot go to the Commissioner of Indian Affairs or the Assistant to the Secretary for Indian Affairs on every single problem. There are other area directors throughout the Nation. There is only so much time in the day. Now, reality; to what extent do you talk, say, to responsible staff officials in Washington daily, weekly, to solve some of the problems of the Navajo Nation?

MR. LINCOLN. About three times a week.

ACTING CHAIRMAN HORN. And this would only be if your people at the staff level hadn't been able to solve it with their equivalent counterparts—

MR. LINCOLN. Right, sir.

ACTING CHAIRMAN HORN. —in the Bureau of Indian Affairs.

To what extent do you have control over what your own people do in phoning Washington? Are they—I know my people end-run me. I have a few in that category. Now, how many end-run you?

MR. LINCOLN. That's a very difficult one to answer because most of the ones that do end-run don't let you know they're end-running.

ACTING CHAIRMAN HORN. That's right.

MR. LINCOLN. So—

ACTING CHAIRMAN HORN. I am just trying to figure out, can you develop a policy and you, Anthony Lincoln, carry it out as area director?

MR. LINCOLN. It's very difficult. You know, like you would do, you write a memo, and cross your fingers and hope that it's carried out.

ACTING CHAIRMAN HORN. Well, you mentioned earlier the internal budget review process. How does that work? Do you personally go and present your budget on behalf of this area?

MR. LINCOLN. Yes, I do. We have a rather lengthy process that ends up being a discussion of budget activity for the area, and most of it, basically, has been on the basis of what was done last year. But this is a review with each of the program officers in Washington. And then, finally, a review with the administrative support arm of Washington, and then that's as far as my participation in that process goes.

ACTING CHAIRMAN HORN. How much have you been able to achieve, increase your budget in the last fiscal year or so over what you have had?

MR. LINCOLN. I'd like to present that for the record because I have a pretty definitive chart that—

ACTING CHAIRMAN HORN. Good.

MR. LINCOLN. —shows that over the period of time that I've been here.

ACTING CHAIRMAN HORN. How many years back do you go?

MR. LINCOLN. It's been substantial.

ACTING CHAIRMAN HORN. All right. That will be Exhibit 60 then—

[The document described was marked Exhibit No. 60 for identification and received in evidence.]

ACTING CHAIRMAN HORN. —because I think one of the things I find in most human organizations, governmental or otherwise, people in the field have very good ideas. They see needs. They want to do something about it.

They start the recommendations on their long trail when other people in the field started competition with them from other parts of the particular system, and then you have staff views, often from people who have never run anything in their lives, but they all have views on things. And that sort of takes the edge off what people in the field want.

And then you have superior monitoring authorities, be it in this case an executive agency like OMB, Secretary of the Interior, who say, "We really don't care how much you want. This is what it's going to be. Now, you figure out what you can do with that given amount of money."

Is that the way your process works?

MR. LINCOLN. Exactly.

ACTING CHAIRMAN HORN. How many formulas do you have that guide your budget process? Do you have a substantial number? Or do you have freedom to meet certain types of needs—

MR. LINCOLN. No. It's—

ACTING CHAIRMAN HORN. —that might be unique?

MR. LINCOLN. It's a case of being handed a tentative allocation, and the allocations have been handled all the way down to the specific operation of—as it's been termed, "by location," which means, you know, you get a tentative allocation all the way down the line. That's what you have to live with.

ACTING CHAIRMAN HORN. Well, I will yield to Mrs. Freeman now.

COMMISSIONER FREEMAN. Mr. Lincoln, yesterday—I believe it was yesterday anyway—from the testimony of Mr. Brandt and Mr. Dudley in response to some questions, it became very clear that neither of those individuals had independently taken any steps to enforce the Indian preference clause. And in response to a question, I believe it was Mr. Dudley who said that he determined the extent to which there would be Indians in the work force by making a visual count. And I believe that somebody questioned him on that.

I would like to know—and I believe you may have answered it, but I do not remember—is either of those gentlemen accountable to you?

MR. LINCOLN. Yes. I answered the question, and I will answer it again. Mr. Brandt is.

COMMISSIONER FREEMAN. Yes. Did you hear, or were you aware of his testimony yesterday?

MR. LINCOLN. No.

COMMISSIONER FREEMAN. Well, this was the testimony, and my question to you would be how do you—in what way are they accountable to you, and when you now have it brought to your attention that perhaps something in your office that ought to be done is not being done to obtain compliance? What could you tell the Commission, what steps will you take to see to it that at least those gentlemen will carry out their jobs?

MR. LINCOLN. I think it can be a most affirmative step by the delineation of orders with regard to the application of the preference rule and specific time frame within which that process, let's call it for now, would be activated and the specifics by which it would be reported. I think that certainly is in order.

COMMISSIONER FREEMAN. Because one of the things that is required is that at least the payroll be—at least of a contractor—be submitted to your office.

MR. LINCOLN. Sure.

COMMISSIONER FREEMAN. And if it is not reviewed, as it ought to be, then, of course, the noncompliance continues. Will you take steps to assure that the payroll will be looked at?

MR. LINCOLN. Certainly.

COMMISSIONER FREEMAN. Thank you.

ACTING CHAIRMAN HORN. Commissioner Ruiz.

COMMISSIONER RUIZ. I think you stated that you called Washington an average of three times a week?

MR. LINCOLN. That's about correct.

COMMISSIONER RUIZ. When was the last time you called Washington?

MR. LINCOLN. This morning.

COMMISSIONER RUIZ. And with whom did you speak?

MR. LINCOLN. Marvin Franklin.

COMMISSIONER RUIZ. When was the next to the last time that you called?

Mr. Lincoln. The day before yesterday.

Commissioner Ruiz. With whom did you speak?

Mr. Lincoln. Marvin Franklin.

Commissioner Ruiz. How many times back have you continuously spoken to Marvin Franklin?

Mr. Lincoln. How many times back? I don't recall.

Commissioner Ruiz. Continuously. Before anybody else intervenes into the picture with whom you have spoken. Would you say the last fifteen times?

Mr. Lincoln. Well—

Commissioner Ruiz. Pardon?

Mr. Lincoln. That's a difficult one to make any answer to.

Commissioner Ruiz. Well, try to guess. Have you spoken to anybody else besides Marvin Franklin during the last fifteen times?

Mr. Lincoln. I don't recall back fifteen conversations ago. It's pretty difficult.

Commissioner Ruiz. All right. Go back 2 weeks.

Mr. Lincoln. I'll make—okay, I'll make a guess. Yes, fifteen, 2 weeks.

Commissioner Ruiz. Fine.

Mr. Lincoln. During the past 2 weeks, I may have, I can't—

Commissioner Ruiz. Has Marvin Franklin ever been out here to the Indian reservation?

Mr. Lincoln. Yes, he has.

Commissioner Ruiz. When was the last time he was here?

Mr. Lincoln. About 3 weeks ago, I think it was.

Commissioner Ruiz. And prior to that time, when was the last time, if you recall, if it is not too difficult, before, that he was here?

Mr. Lincoln. He was here during the visit of the Secretary of the Interior.

Commissioner Ruiz. And when was that?

Mr. Lincoln. I don't recall the exact date but that's—

Commissioner Ruiz. That was when we had a Secretary of the Interior.

Acting Chairman Horn. Still do.

Mr. Lincoln. We still have a Secretary of Interior—

Commissioner Ruiz. Oh. I thought he had been replaced.

Mr. Lincoln. —I hope, unless you have information that I don't have.

[Laughter.]

Commissioner Ruiz. Everybody is being replaced.

Mr. Berkson. He might have been.

[Laughter.]

Commissioner Ruiz. When was the last time that he was here? The Secretary of the Interior, please.

Mr. Lincoln. I don't recall the exact date. I'm sorry.

Commissioner Ruiz. Can you guess?

Mr. Lincoln. When was that?

Mr. Berkson. I don't know.

Mr. Lincoln. Well, it's been within the past 3 months, I think. I just don't—

Commissioner Ruiz. Three months. All right. Now, we've got this line established between you and Marvin Franklin. With relation to counsel, you are the attorney for the Bureau of Indian Affairs, and, as such, have the responsibility of interpreting Indian laws?

Mr. Berkson. Yes, sir, when we're called upon to do that and—Go ahead, though.

Commissioner Ruiz. To whom—

Acting Chairman Horn. Excuse me. I think we ought to clarify that. You, as I recall years ago, are really in the Office of the Solicitor, aren't you, of the Department of the Interior?

Mr. Berkson. Yes.

Acting Chairman Horn. But assigned to Bureau of Indian Affairs matters?

Mr. Berkson. That's not quite—

Acting Chairman Horn. Or what is the current situation?

Mr. Berkson. The Office of the Solicitor for the Interior Department handles all of the legal work for the entire Department, and they have various field offices across the Nation. The field office that I work in, for instance, is responsible for all the Interior agencies in this area, which include the Bureau of Outdoor Recreation regional office, the regional office of the Fish and Wildlife Service, the Bureau of Reclamation, Middle Rio Grande project, the USGS [U.S. Geological Survey], and several other offices of the Bureau of Indian Affairs in the Albuquerque area that are either under the Commissioner or other area and agency offices.

Commissioner Ruiz. Are you in charge of that particular division?

Mr. Berkson. No, I'm not. I'm just a hired hand in the office, sir.

Commissioner Ruiz. All right. Now, you are in that division, however?

Mr. Berkson. Yes, sir.

Commissioner Ruiz. As a lawyer?

Mr. Berkson. Yes, sir.

Commissioner Ruiz. Who is your immediate superior?

Mr. Berkson. Lotario D. Ortega.

Commissioner Ruiz. And where are his offices?

Mr. Berkson. Same place; in Albuquerque.

Commissioner Ruiz. How many associates do you have in this office?

Mr. Berkson. We have two people in the Albuquerque office, and I'm one of them.

COMMISSIONER RUIZ. To whom do you both report?

MR. BERKSON. We both report to the—well, I report to Mr. Ortega. Mr. Ortega reports to the regional solicitor out of Tulsa, Oklahoma.

COMMISSIONER RUIZ. The regional commissioner?

MR. BERKSON. The regional solicitor.

COMMISSIONER RUIZ. As an attorney—I am referring to the line of authority between counsel.

MR. BERKSON. Right. There's a regional office in Tulsa that is over our field office, as well as many other field offices.

COMMISSIONER RUIZ. And who is in charge of that one?

MR. BERKSON. His name is Raymond D. Sanford.

COMMISSIONER RUIZ. And to whom does he report directly, if you know?

MR. BERKSON. He reports directly, to my knowledge, to the Deputy Solicitor.

COMMISSIONER RUIZ. And do you know his name?

MR. BERKSON. David Lindgren.

COMMISSIONER RUIZ. And there we have the line with respect to the legal interpretation of these instruments and the advice that is given to the Solicitor in—

MR. BERKSON. No. No, sir. That's the line of direct authority and it has nothing to do with the particular problem that we seek advice on. The Solicitor's Office then has an organization of its own which is broken down into Indian division, parks division, and, in fact, I don't even know all the divisions. But, for instance, when I get a problem on Indian affairs in the Albuquerque office, we don't call Mr. Stanford and I don't call Mr. Ortega. I call the man that I think is the most qualified in Indian affairs that would know the legal answer to what I'm asking.

COMMISSIONER RUIZ. And who is he?

MR. BERKSON. It all depends. That's broken down, too.

COMMISSIONER RUIZ. Who is your general counsel in that particular item of Indian affairs?

MR. BERKSON. Who is what, sir?

ACTING CHAIRMAN HORN. Well, it is really—you are saying who is the counsel in the Washington office.

COMMISSIONER RUIZ. Yes.

MR. BERKSON. There is an Associate Solicitor—There's an Associate Solicitor for Indian Affairs, sir, and he has a big staff which is broken down into all kinds of specialties, and that's all they do, is Indian affairs. And if I had a problem in the Bureau of Outdoor Recreation, for instance, I would call—I would not be dealing with them.

COMMISSIONER RUIZ. Well, what I am trying to find out, counsel, and as an attorney, is whether you interpret the law, or whether somebody above you interprets the law, whether somebody hands down the law to you already interpreted. In this interpretation of the law—

MR. BERKSON. No, sir.

COMMISSIONER RUIZ. —Indian laws, who is the main guy?

MR. BERKSON. Ninety—98 percent of the legal questions we get in the office, we handle ourselves. And it is very rare when—very rare when we have to go into Washington. And if we do, we can usually handle it over a 5-minute or less telephone call. We have so much work in the office right now that this is the way we have to work. We have to use the telephone extensively, and legal advice over the phone is our normal type of day's work.

COMMISSIONER RUIZ. There is bedlam, frankly.

MR. BERKSON. But we answer—we answer most of the questions over the phone, sir. The ones that get kind of held up are the ones where they want a written opinion, and we have to—that, of course, has to wait until we can stop the phone calls and stop the meetings that we have to attend to and this sort of thing.

COMMISSIONER RUIZ. Well, even though there are no decisions that you have mentioned within this organization of lawyers, there must be an interpretation of the law that you submitted to us as being the law of 1830. Is there an interpretation within the legal department of what that means?

MR. BERKSON. No, sir. That question would have to be submitted to us. I would have to—First of all, I don't recall this law ever having been formally submitted to us. I recall that we've had some informal questions on it, and I've discussed it similarly to—the way I've discussed it with your folks earlier. But if it was formally raised for legal opinion, first of all, they would ask some question with respect to it. They wouldn't just say, "What's your opinion of this law?" They would have some specific problem, and they would say, "How does this particular law apply to this problem?"

COMMISSIONER RUIZ. Well, it is applying to education there, the transferring of the —

MR. BERKSON. Well, what would your specific question be, as an example, sir, with respect to this law?

COMMISSIONER RUIZ. Well, if I recall, you stated that, in the law, that the law said that the question of education could be referred directly to the Indian tribe as to how they would act with respect to that delegation.

MR. BERKSON. I don't recall saying—

COMMISSIONER RUIZ. Did I understand that law correctly, sir?

MR. BERKSON. Sir, I don't understand—I don't recall having made that statement.

COMMISSIONER RUIZ. Well, will you read the law again because I am interested in getting a legal opinion from your office as to how that law is to be interpreted.

MR. BERKSON. Which law is it now?

COMMISSIONER RUIZ. The one you just read, in 1830, with respect to this matter of education.

ACTING CHAIRMAN HORN. 1834.

COMMISSIONER RUIZ. 1834. I beg your pardon.

ACTING CHAIRMAN HORN. We already have the opinion as Exhibit 59. I don't believe—

MR. BERKSON. No. No. Yes, sir. The opinion is on the 1834 law, but that has nothing to do with contracting. That has to do with directing the employment of Federal employees by tribes.

COMMISSIONER RUIZ. There is an opinion on it? Did I understand you—

MR. BERKSON. Yes, sir.

COMMISSIONER RUIZ. —on the 1834 law with respect to that?

MR. BERKSON. Yes. There's an opinion on a specific problem with respect to this law.

COMMISSIONER RUIZ. Was that referred to as an exhibit, Mr. Chairman?

ACTING CHAIRMAN HORN. Well, we have moved—

MR. BERKSON. And this is what we're going to submit for the record.

ACTING CHAIRMAN HORN. Yes. We have moved to a matter of discussion that was yesterday. And this will be, I assume, Exhibit 13 and some related exhibits where we are talking about the Navajo preference clause, if you are moving into contracting.

But before we confuse this with several different laws, I think we ought to finish up the organization of the Solicitor's Office. We have gotten up to the Deputy Solicitor. And if I might, let me just suggest and try to get response from counsel, have you ever served in the Washington Office of the Solicitor?

MR. BERKSON. No, sir.

ACTING CHAIRMAN HORN. So you have been in the field. But just from what you sort of gather as to how it works, am I correct that you have a problem: somebody comes in—Mr. Lincoln—says, "Look, can we do this under existing law, Executive orders or administrative regulations of the Secretary of the Interior?" You look at it. If you have got some prior experience with this, you can, maybe, give him an answer. If not, you go to the subject matter specialist in Indian affairs under the Associate Solicitor of that respective division in the Washington office who has spent his whole life answering questions like that, practically, for various regional attorneys and line officers around the country.

Now, I think what Commissioner Ruiz is leading to is, when you want to have a creative interpretation of the law, a breakthrough, shall we say, when you want to do on behalf of a public program—which the tax lawyers usually do to keep people from taking tax deductions if you are dealing with the Internal Revenue Service—where does that Associate Solicitor go in Washington? Am I correct that he would consult with the Solicitor on a major change in interpretation of the law? And am

I also correct that the Solicitor reports directly to the Secretary of the Interior? Is that your understanding?

MR. BERKSON. The latter part of your question is my understanding; that is, that the Deputy—well, that is that the Solicitor reports to the—

ACTING CHAIRMAN HORN. Secretary of the Interior.

MR. BERKSON. Well, he may have to report to the Under Secretary. I'm not—I can't answer that.

ACTING CHAIRMAN HORN. Well, okay. Often, you report to both people; one for operations, the other for policy.

MR. BERKSON. But the first part of your question, I do not know if the Associate Solicitor for Indian Affairs has to check every opinion that he writes with the Deputy Solicitor. But I would think that, if it's of major importance, he probably would.

ACTING CHAIRMAN HORN. Yes. Well, you see, the interesting question here, which occurs in all bureaucratic public agencies, is the degree to which lawyers are on tap, not on top. Now, you know, the degree to which line officials, the Commissioner of Indian Affairs, the Assistant Secretary of the Interior, the Under Secretary, and the Secretary, can really influence their own legal staffs to get some new creative interpretations so you can change the way programs are carried out. And I really do not think that Mr. Berkson, since he has not worked in Washington, is able to really give us the type of answers to those questions even though he might like to. That is the problem.

MR. BERKSON. I did want to make the point, Mr. Horn, though, that most of our legal decisions are made in our office, that we get. We, of course, don't answer any legal decision that we don't get first of all. And there's very, very few that we're held up in Washington on. And I think this Exhibit 59 will be an example of what you just discussed. It is an opinion of major importance, and I think it is what you just referred to as a breakthrough, and I think you'll be interested to see that particular opinion.

ACTING CHAIRMAN HORN. Very good. Any further questions?

COMMISSIONER RANKIN. Didn't you have some more that you wanted to ask?

COMMISSIONER RANKIN. No. I'll forego it.

ACTING CHAIRMAN HORN. Commissioner Freeman.

COMMISSIONER FREEMAN. I have one other concern, Mr. Berkson. The policies and programs of the Bureau of Reclamation have often been in conflict with the stewardship that is required of the Bureau of Indian Affairs. As an attorney, this creates some real serious conflict of interest problems and, of course, it has been of concern to the Indian communities. I would like to ask your opinion as to how you believe that this could be, should be resolved in the interest of the Indians and the requirements of the Bureau of Indian Affairs.

MR. BERKSON. Well, if I may be permitted to give my personal opinion; as you know, I can't speak for the Department of the Interior or the Secretary of the Interior or Mr. Ortega or anybody else but my boss, but my personal opinion is the Bureau of Indian Affairs should not be in the Department of the Interior, for this and other reasons.

COMMISSIONER FREEMAN. For the conflict of interest situation that may develop?

MR. BERKSON. I think the conflict is just a small part of it, as a practical matter. But I think the fact that it's people-oriented demands much more importance than what it's been given. I think it should be similar to a commission like yourself that governs Indian affairs and not be under any department of the Government.

COMMISSIONER FREEMAN. Is legislation pending? Did the legislation proposed by the President contemplate the kind of an agency that you have in mind?

MR. BERKSON. No, it does not.

COMMISSIONER FREEMAN. There is nothing—

MR. BERKSON. But of course, this—bear this in mind, too. It's also my feeling that whatever is done is with the wishes and desires of the Indian people. My own feeling is that they would be better off if they had a commission, let's say, answerable directly to Congress or even perhaps directly to the President. I'm not sure about exactly how it would be handled. But I think that they should determine this for themselves.

But I definitely believe that it shouldn't be in the Department of Interior, and I hope the Secretary of the Interior, if he differs from me, will forgive me for this statement.

COMMISSIONER FREEMAN. Well, the Indian people have, from time to time, many of the tribes have expressed concern about the conflict, especially as it relates to the Bureau of Reclamation.

MR. BERKSON. Yes. I've heard that, but we haven't had the problem in our office, in my opinion. For one thing, our reclamation client is not a big, huge dam builder and he doesn't deal in tremendous water rights. He operates a project which is called the Middle Rio Grande irrigation project, which is a system of irrigation canals up and down the Rio Grande valley.

And, usually, when we get into a problem where it involves, say, an irrigation canal over Indian lands or this sort of thing, there's usually another attorney appointed who handles the Indians' side if it's necessary because—

COMMISSIONER FREEMAN. Outside of the Federal Government?

MR. BERKSON. No. If it's necessary for our office to give, say, legal advice to a pueblo through which an irrigation canal passes, and Reclamation has an interest and the Indians have an interest, well, it's our policy that we have a different attorney in the office assigned to it and, sometimes, in another field office.

We try to avoid these conflicts as much as possible. But I will admit that being in the same department, there are conflicts. And I think that this type of testimony was brought out in your hearings in Albuquerque.

ACTING CHAIRMAN HORN. Thank you, Mr. Berkson. I assume you are protected under Section 1505 of Title 18, and you might be assured of promotions for years to come for the frankness of your testimony.

MR. BERKSON. Frankly, the way Watergate's been going, I really don't care.

[Laughter.]

ACTING CHAIRMAN HORN. Mr. Buggs.

MR. BUGGS. No questions.

ACTING CHAIRMAN HORN. Let me pursue a couple of questions, Mr. Lincoln, with you. Did you ever ask the Navajo Tribe to take over education? I have forgotten on that. They have an education plan, as you know.

MR. LINCOLN. I've not asked them specifically on education, but I think the inquiry that was made by some of your staff members was to the effect of the offer of programs across the board in the Bureau and that offer still is good.

ACTING CHAIRMAN HORN. Have you recommended to the BIA, say, that maybe just as a matter of policy in the agency, they ought to be thinking about granting to a reservation total control on education so we get away from the multiplicity of school systems?

MR. LINCOLN. I didn't get the first part of your question.

ACTING CHAIRMAN HORN. Well, have you ever, personally, recommended to the Commissioner of Indian Affairs, let's say, or responsible officials in BIA, that perhaps on an Indian reservation educational functions ought to be turned over to the tribal government?

MR. LINCOLN. Certainly.

ACTING CHAIRMAN HORN. So we get rid of the multiplicity of public, Federal, county, State, city systems?

MR. LINCOLN. Certainly.

ACTING CHAIRMAN HORN. You have so recommended?

MR. LINCOLN. Yes, I have.

ACTING CHAIRMAN HORN. Is this in person, in writing?

MR. LINCOLN. In person.

ACTING CHAIRMAN HORN. What kind of response did you get to that recommendation?

MR. LINCOLN. A kind of far-out stare.

ACTING CHAIRMAN HORN. I know the feeling. Commissioner Ruiz wonders if that stare came accross the transcontinental telephone from Marvin Franklin.

MR. LINCOLN. No. It was in person, as a matter of fact.

ACTING CHAIRMAN HORN. From Mr. Franklin?

MR. LINCOLN. Yes, it was.

ACTING CHAIRMAN HORN. Well, I think, Commissioner Ruiz, we know who we can get to answer all these questions in the Washington hearing on this subject.

Now, let me ask. It seems to me, as area director, a logical way to go about this job—and I just wondered to what extent you have had a chance to do it, realizing all the things you have got to do—would be to look at setting up a 5 or 10-year plan in the various areas under your jurisdiction. Just where is this area going to be 5 years from now or 10 years from now in education, in economic development, maybe health—well health care is in HEW, really. But let us take economic development and education, two major focuses. Have you got any sort of planning process that helps you look ahead 5 years or 10 years as to where we ought to be?

MR. LINCOLN. Yes. There's a planning process, but it's the process, you know, that we just talked about.

ACTING CHAIRMAN HORN. It is the one related to the budget, more than anything else?

MR. LINCOLN. That's right. And, you know, most of the planning that occurs in this bureau, such as in other bureaus, and it happens quite a bit in States and university-type situations where, you know, you get a dollar amount and you say, "Well, that's not enough. It doesn't provide for appropriate and adequate planning." Well, they don't listen to that part of it. They give you so many dollars that you're going to work around and that's where your plans get developed from. So it's difficult to answer that question on an affirmative basis because that's the way the process works.

ACTING CHAIRMAN HORN. But nothing would preclude you, as area director, from calling your people together and through some sort of consultation process with the tribe, with chapters, with the community generally, saying, "Where is it you want to be 5 years from now? How do we get there?"

MR. LINCOLN. We're in the process of doing that.

ACTING CHAIRMAN HORN. In what field?

MR. LINCOLN. As a matter of fact, tomorrow morning, there's been a meeting that's been called between the tribe and Marvin Franklin and my staff to begin working on this kind of approach, and I think it's a—

ACTING CHAIRMAN HORN. In what field are you going to work on?

MR. LINCOLN. This is going to be principally in—let's start with, first of all, the relationship between the area office and the Navajo Tribe and where does that stand. Let's get down to some basic ground rules. Then, secondly, we'll approach education. We'll approach—as the tribe has laid the priorities, let's begin to go through the process.

And I'm really, very frankly, quite encouraged by it because, now, we're getting down to the thing that you've just raised as a concern which, certainly, has been a concern of mine. Let's get away from the multiplicity of government agencies. It creates a rat race for the Indian to try to find out what door to go through. And if we've got those kind of rat races within the individual bureaucracies, you know, certainly, the rat races there, in terms of the other bureaucracies, are—

ACTING CHAIRMAN HORN. Well, obviously, we have a great parallel in recent—

MR. LINCOLN. So we're starting.

ACTING CHAIRMAN HORN. —American history, which is the Tennessee Valley Authority, which drove the Washington bureaucrats and Agriculture and Interior out of their minds but, nevertheless, it reclaimed a seven-State area. And so that there is, you know, some possibility—

MR. LINCOLN. So I'm quite encouraged by it because Navajo, being the largest area, certainly can, I think, take some pretty definitive steps to leading a challenging approach, if you will.

ACTING CHAIRMAN HORN. You know, one thing that amazed me, I listened to the representatives of the Economic Development Administration, EDA, and nowhere did they have a 5 or 10-year plan of the physical infrastructure that was needed for this reservation.

MR. LINCOLN. Not at all.

ACTING CHAIRMAN HORN. And I just wondered, to what extent is that really the responsibility of the Bureau of Indian Affairs to develop a plan for what type of sewers, community centers, paved roads, you-name-it—the basis you need if an economy is going to move from impoverishment, underdevelopment into some sort of the twentieth century? I mean, does the Indian Affairs group get this?

MR. LINCOLN. Well, I think to the extent that it, you know—Again, I think the concern with which I came to this job was to try and seek to put that kind of mechanism to work, if you will, rather than a "this is what we did last year, so we're going to do it again this year" kind of basis. And it takes, as you're well aware, 3 years to get through the Government budget cycle.

So, hopefully, we're beginning to assume that kind of attitude and the place where it's encouraging. And, again, you know, it's a painstakingly slow process. We're starting and we've started in terms of roads, the development of roads by going and sitting down with the Navajo Tribe and their transportation committees to determine, both at the agency level and at the interagency level, you know, what kind of road systems we're going to be needing. And this is the basis on which it's beginning to progress. It's a feeble start, I'll admit. But I think the thing that's challenging about it is that it is a start.

ACTING CHAIRMAN HORN. Do you have a director of planning in your area office to pull together the ideas from all the line aspects of your agency?

MR. LINCOLN. No. I've been asking for one ever since I got here.

ACTING CHAIRMAN HORN. And where has it been blocked? In the Washington budget process?

MR. LINCOLN. That's a good way to answer it. Yes. It's somewhere up there.

ACTING CHAIRMAN HORN. I must say, one of the better things I did, as a university president, was to create an executive dean for planning, and, as a result, I think we are one of five universities in the country that has integrated planning. But it's impossible—

MR. LINCOLN. Well, I've got one, but I can't tell Washington I've got one.

ACTING CHAIRMAN HORN. Mr. Glick.

MR. GLICK. I just have one question and really along the lines you have been discussing. In your proposal that the tribe take over many of the functions of BIA now, do you think that the tribe has the technical capability of managing those functions? And, if not, what can BIA do to help them achieve that technical capability?

MR. LINCOLN. Well, you know, that's an interesting question because I think we're going to have to, both in the Bureau and in the tribe, create this dialogue that hasn't existed before. Or maybe that's not quite right to say that it hasn't totally existed. I think it existed in some form.

But I think with the advent of the President's self-determination message, you know, we have a new thrust, a new, a different attitude, if you will. And the bureaucracy, as big as it is, and Navajo being the largest, in terms of the Bureau of Indian Affairs, is probably the slowest to react because it's so darned large. But I think what it has started, though, is the opportunity for the tribe to examine itself.

You know, let's get the questions answered and let's answer them together. Not from just the standpoint of my arbitrarily saying, "Yes, I think they do," or "No, I think they don't." Let's begin to examine the task at hand and really examine it from that basis and examine it in the sense that, maybe, there's going to be need for innovative change. Maybe what we've got—maybe the vehicle that we have been driving for the past 100 years is inappropriate for the Navajo. Maybe we've got to begin to start on that basis of examination.

And I think what is genuine by this is that it has started that dialogue. I think, certainly, it's slow in coming and has been long needed. But I'm quite encouraged by it because I think it's beginning the process, if you will. But I would like to be able to report back to you in 5 years that, you know, we're down the road a ways and give you some real specifics about what's happening. Today, it's started, and that's the best I can say.

MR. GLICK. Well, actually, in specific terms, suppose the legal opinion that the tribe could be a contractor for education came out of Washington and policy decision made that that should be done, do you think the tribe right now has the capability of assuming that function?

MR. LINCOLN. Yes.

MR. GLICK. I have no further questions.

ACTING CHAIRMAN HORN. Mr. Buggs.

MR. BUGGS. Mr. Lincoln, do you know how much the tribe is paid for its oil royalties, what kinds of royalties it gets per barrel of oil?

MR. LINCOLN. No. I don't have that information readily available.

MR. BUGGS. I suppose that—

MR. LINCOLN. I could sure get it, though.

MR. BUGGS. I suppose that the BIA office assisted in the negotiations in connection with that contract?

MR. LINCOLN. Yes, I'm pretty sure they did.

MR. BUGGS. What about we heard yesterday, for example, that the tribe gets from 20 to 25 cents per ton of coal as a result of its arrangement with the Peabody Coal Company, which we figure is about one-twentieth of the amount that the company sells its coal for. I understand, also, that there is some concern on the part of the tribe that, in some way, they aren't getting what they should get out of that kind of arrangement, which I believe was executed perhaps before your time.

MR. LINCOLN. Yes, it was.

MR. BUGGS. But have you taken any steps with the Solicitor in Washington, or whoever, to look into whether or not there can be a renegotiation of a contract that now lasts for 75 years?

MR. LINCOLN. Well, I think—No, I haven't, to answer your question. But I think the tribe is certainly in gear in pursuing this.

MR. BUGGS. But do they have to do it by themselves?

MR. LINCOLN. No. They don't have to do it by themselves. But until there's a—I think until there's a position formulated, and—you know, what I'm faced with is, a determination has been made in the past, and I'm kind of stuck with it for a while, until somebody overturns it.

ACTING CHAIRMAN HORN. Presumably, the Bureau of Indian Affairs acquiesced in that determination, am I correct?

MR. LINCOLN. That's true.

ACTING CHAIRMAN HORN. Your predecessor once or twice removed.

MR. LINCOLN. Yes, sir.

MR. BUGGS. Well, it seems to me that if the Bureau, therefore, is equally responsible, if not more so than the tribe, for what happened to it in terms of the royalty, it would occur to me that the Bureau, therefore, should take at least an equal responsibility in seeking whether or not there cannot be a renegotiation.

MR. LINCOLN. I think you're correct in your assumptions, yes.

MR. BUGGS. Well, does the area director plan to try to do something about that?

MR. LINCOLN. Yes.

ACTING CHAIRMAN HORN. Let me recall that Exhibit 3 came about during Chairman MacDonald's testimony, and that is going to consist of a list of Navajo resolutions submitted to Federal agencies that have been unreasonably delayed or not acted upon. That list, presumably, will be furnished to the Commission. Do you find that this is a real problem in terms of the failure of BIA to act one way or the other on tribal resolutions?

MR. LINCOLN. No. I don't really think so.

ACTING CHAIRMAN HORN. I think, counsel, we should submit that list to Mr. Lincoln when it comes in. And if he would like to add something, that ought to be part of Exhibit 3, just in fairness.

MR. LINCOLN. I'd appreciate that.

ACTING CHAIRMAN HORN. Any further comments?

Well, we thank both of you for your candor and frankness in coming here. We appreciate it.

MR. LINCOLN. I thank you.

ACTING CHAIRMAN HORN. The last panel, before we go to the open session, will be Mr. Dillon Platero and Joy Hanley of the division of education, Navajo nation.

[Ms. Joy Hanley and Mr. Dillon Platero were sworn and testified as follows.]

TESTIMONY OF MRS. JOY HANLEY, DIRECTOR OF ELEMENTARY EDUCATION, NAVAJO NATION, AND MR. DILLON PLATERO, DIRECTOR, DIVISION OF EDUCATION, NAVAJO NATION

ACTING CHAIRMAN HORN. Please be seated.

Mr. Glick.

MR. GLICK. Thank you, Mr. Chairman.

For the record, will you both, please, identify yourself by saying your name and address and occupation.

MS. HANLEY. My name is Joy Hanley. I'm director of elementary education for the Navajo nation. My address is Post Office Box 247, Window Rock, Arizona.

MR. PLATERO. My name is Dillon Platero. I'm director, Navajo division of education, and my Post Office Box Number is 684, Window Rock, Arizona.

MR. GLICK. Thank you.

Mr. Platero, when was the Navajo tribal education office established?

MR. PLATERO. I believe it was established approximately 2 years ago.

MR. GLICK. And how long have you been employed by it?

MR. PLATERO. I've been employed by the Navajo Tribe in this position since March.

MR. GLICK. Mrs. Hanley, how long have you been with the tribal division of education?

MS. HANLEY. I've been with the Navajo division of education for 2 years.

MR. GLICK. What are the kinds of problems, Mrs. Hanley, that the tribal division of education attempts to deal with?

MS. HANLEY. We attempt to deal with many, many problems. But what we're mainly concerned with is planning for the future and planning educational programs that will benefit Navajo children.

Many of the problems that we have encountered are the results of our different efforts in the areas of providing technical assistance to different schools or coummunities. We have encountered problems in the area of—Well, one of the problem areas that we have identified is that Navajo children do not really receive an equal opportunity to education because many Navajo children begin school speaking the Navajo language and their teachers are not Navajo. And, again, many of the agencies, or all the agencies, acknowledge this fact; that the percentage of Navajo teachers—or, the percentage of teachers that speak the native language of the children is very low. But when we attempted to set up a program that would upgrade Navajo people in the community and provide an educational program for them, many of these same agencies that acknowledge they needed Navajo teachers in the classroom are unwilling to release teacher aides to attend class.

MR. GLICK. Mrs. Hanley, when you say "provide technical assistance," is that provided to public school districts as well as to tribal communities?

MS. HANLEY. It's provided in areas that it's requested. Mostly, we provide technical assistance to Indian communities that are requesting clarification of educational law. Everyone knows about 8910 programs, but they really don't understand what the rules and regulations are. We have liaison people that work with Indian communities in trying to explain the law to them and working with them, getting them involved in the planning.

We provide technical assistance in the area of special education. We have a special ed. department that assists different programs in writing proposals, assists different schools in planning programs.

MR. GLICK. Have you ever received a request for assistance from the Gallup-McKinley public school system?

MS. HANLEY. Not to my knowledge.

MR. GLICK. From Tuba City?

MS. HANLEY. I don't believe so. We might have received assistance from the communities for information on different programs, but not necessarily from the school district itself.

MR. GLICK. You mean directly to the community people which they can take to the board of education—

MS. HANLEY. Right.

MR. GLICK. —is that generally what the process has been?

MS. HANLEY. Yes. In many of the community education programs, that's true. But, again, we do provide technical assistance in designing programs and assisting contract schools in their contracting procedures.

MR. GLICK. Mr. Platero, I have a report called, "Strengthening Navajo Education." And it says it is prepared by the division of education of the Navajo Tribe. Is this that report?

MR. PLATERO. Yes, sir.

MR. GLICK. Mr. Chairman, I would like permission to introduce this report into the record.

ACTING CHAIRMAN HORN. Fine. It will be introduced as Exhibit 61.

MR. GLICK. Thank you.

[The document described was marked Exhibit No. 61 for identification and received in evidence.]

MR. GLICK. Mr. Platero, does your office monitor the use of Federal funds for Indian education by public school boards in the area, such as JOM?

MR. PLATERO. If I can read a prepared statement of the testimony which I would like to present for the record, I would like to be permitted to do that, and then I'll answer some of the questions that might be posed after that.

MR. GLICK. Well, may I be rude enough to ask how long your statement is, Mr. Platero? As you can see, it is now 7:30.

MR. PLATERO. The statement is about two pages, double-spaced.

MR. GLICK. Fine. Fine. Then please proceed.

MR. PLATERO. The Navajo Tribe, through the Navajo division of education, has commenced a comprehensive planning period for the unification of education on the reservation under the authority of the Navajo Tribe. This is the first step of many toward the fulfillment of one of the greatest goals of Navajo self-determination: the control of Navajo education by the Navajo people.

Contained within our recent publication, "Strengthening Navajo Education," you will find the historical education picture. From this first truly Navajo statement came the address of Chairman MacDonald on May 30, 1973, and subsequent statements on the goal of the Navajo Tribe to assume the leadership of its own educational destiny. With the realization that we are working in the backyards of several State governments—Arizona, Utah, and New Mexico—and the Federal Government through the Bureau of Indian Affairs we initiated educational legal research which would determine the most favorable course of action for the Navajo Tribe to take.

The results of this research have led us to the development of the Navajo tribal educational agency and the formulation of legislation which would assist this development. The legislation which we propose is in these stages: (A.) Federal acts which would recognize Navajo tribal education agency on an equal basis as the State departments of education. (B.) Certain enabling legislation of the States, but only where the States are involved; and, (C.) Affirmative legislation of the Navajo Tribe which would provide for the takeover of existing educational agencies within our geographic boundaries.

As I have mentioned, the Navajo division of education is conducting various research projects. These are stepping stones to programs implementation at the present time. Several committees are working with the Navajo division of education to develop the programs and guidelines needed. These committees are made up of individuals who represent every type of educational agency present on the Navajo Reservation: (A.) The Bureau of Indian Affairs schools. (B.) Public schools. (C.) Mission schools. (D.) Private schools. (E.) Contract and tribal schools. These committees are working on tribal accreditation standards, certification standards, tribal education agency policy, program development, teacher training, and curriculum development.

Plans are underway to increase the involvement of all sectors of the Navajo community so the resultant educational agency will be truly a Navajo system.

The planning of the Navajo Tribe depends on the assistance and support of the various governmental agencies which work within the Navajo Reservation. However, in working with these agencies, we find a reluctance on the part of these agencies to involve Navajos in their planning. The States of Arizona, Utah, and New Mexico, as well as the U.S. Office of Education, have been the most responsive to the needs of the Navajo, while the Bureau of Indian Affairs, the primary agency established to assist Indian people, offers the greatest resistance.

MR. GLICK. Thank you, Mr. Platero. You have actually answered many of the questions that I would have raised, by your statement. But there is one issue that I want to briefly discuss with you and that is that we heard some testimony earlier today by BIA education officials regarding the contract for the operation of the Rough Rock Demonstration School. And from the description that we received, it appeared that it was a fairly regularized, formalized procedure, and that it went rather smoothly. When request was made, it was examined and decision was made and funding was given.

Yet, while I have been out and talked to people in the area, I found that there has been some question about that. Would you have some comment from your vantage point as director of the Navajo tribal office of education on this particular contract?

MR. PLATERO. Certainly. I'll be glad to do so.

I would believe that some sort of routine contracting system would have been developed in the 7 years of Rough Rock's existence. For example, this year, the negotiation for the contract started back in January or even as early as December. The people at Rough Rock did not even know that the contract or a letter of intent was to be given to them until 3 days after school started. In other words, there were no monies available to pay staff who were under the particular contract which would be paid by the BIA contract.

So that the school, the officials of that school, the board, the people of the community have been under a real strain. And, to date, there is no budget whatsoever which has been designated as a budget for Rough Rock Demonstration School. They would like to know,.I'm sure, whether it is $3 million or $4 million. But, this they don't know. And they do have a letter of intent which provides funds for the basic operation.

So that there is no known routine method by which the Bureau of Indian Affairs, at this time, I don't really think, the mechanism which could at least make known to this school that these are the procedures to follow.

MR. GLICK. Has this happened in previous years or is this the only year in which this delay has occurred?

MR. PLATERO. It's happened every year in the 7 years, because 5 of those years, I was director of the Rough Rock Demonstration School.

MR. GLICK. Would you attribute this to some deliberate delay or to merely a bureaucratic function?

MR. PLATERO. Well, we have various theories which we have discussed. One is that they are fearful that, if this school is successful, that there would be many other contract schools, thereby relieving of their jobs many people who might find the Bureau of Indian Affairs a secure spot as far as employment is concerned.

But the reality of the contract schools and the available Navajo people is that we don't have enough Navajo people who might operate schools like this as directors. But this doesn't necessarily mean that you can't have a contract school because I think the important thing is that you have a governing board which is Navajo, elected locally, and they are directing the program. And if they want a person of white or black or Chicano, I think that's their business.

MR. GLICK. Thank you, Mr. Platero.

I have no further questions at this time.

ACTING CHAIRMAN HORN. Commissioner Freeman.

COMMISSIONER FREEMAN. I have no questions.

ACTING CHAIRMAN HORN. Commissioner Ruiz.

COMMISSIONER RUIZ. Yes.

Joy Hanley, you heard Mr. Lincoln state that, in his personal opinion, the tribe is ready to assume the overall responsibility of schools on the reservation. And apparently you agree with him; is that correct?

MS. HANLEY. Yes.

COMMISSIONER RUIZ. Now, Mr. Lincoln let it out of the bag that Marvin Franklin, with whom he has been having fifteen consecutive conversations, is coming to reservation tomorrow. Have both you and your copanelist been invited to that meeting?

MS. HANLEY. Not to my knowledge. I was unaware of any meeting.

COMMISSIONER RUIZ. I'd suggest that you see Mr. Lincoln so that both of you can have an input now that we know about it.

ACTING CHAIRMAN HORN. I feel like asking, "Will the real Marvin Franklin please stand up?" but we'll find him some day.

Any further comments? Mr. Buggs. Counsel, any further comments? We appreciate—Yes, Mr. Platero.

MR. PLATERO. I do have a couple of comments to make which I would like to be allowed to make.

ACTING CHAIRMAN HORN. Sure, please do.

MR. PLATERO. Yesterday, the Navajo Tribal Council passed a resolution requesting that it take over the Johnson-O'Malley contracts from the Bureau of Indian Affairs for this next fiscal year. Today, the Navajo Tribal Council—The first one, the Johnson-O'Malley contract is for the State of New Mexico, for the State of Arizona, and for the State of Utah. So here is a good indication of the tribe, the tribal council indicating its support to consolidate its efforts so that there be some consistent method in which we might work with the various programs on the reservation.

Today, this afternoon, the Navajo Tribal Council passed a resolution requesting authority for local school boards to give direction to BIA personnel. This is one of the areas you were discussing, in terms of some of the legal difficulties which we get into. But this was a requirement that the Navajo Tribal Council would have to pass, something like this, and so the tribal council has been very consistent at least in going the direction which we have indicated.

Now, I do have one other area which I promised a group of people who have been very dedicated to Navajo education, and I am pretty sure that the question will come up in the later session at which people will be invited to make testimonies, certain testimonies. And I would like to present the resolution, also, as one of your exhibits, and this resolution is from the St. Michael's Indian School.

Under Title IV, they worked on a proposal, presented the proposal, and they were turned down, indicating that the school was a Catholic school, a mission school. But they have a school board which is all Indian, and which is very effective in planning with the school administrator. And our efforts to get funding for these schools of this type, I think, is important because they have been contributing to Navajo education for many years. So I would like to submit that for the record.

ACTING CHAIRMAN HORN. Yes. The Exhibit 62 will be the various tribal council resolutions, if you don't mind, that you have on Johnson-O'Malley and related matters. Exhibit 63 will be the resolution of the St. Michael Indian School Board requesting funding for St. Michael's Indian School.

[The documents described were marked as Exhibit No. 62 and No. 63 for identification and received in evidence.]

MR. PLATERO. And there are just two documents here which I would like to—this is the Chairman MacDonald's historic speech on May the 30th which sort of started off the direction which I pointed out in the brief statement.

ACTING CHAIRMAN HORN. Counsel, didn't we have that in the record earlier at all, or is—

MR. GLICK. No.

ACTING CHAIRMAN HORN. All right. That will be entered as Exhibit 64.

[The document described was marked as Exhibit No. 64 for identification and received in evidence.]

MR. PLATERO. And then we have been also talking about long-range planning, and we do have right now plans for the next 5 years. And Mr. Tucker very graciously asked me, in one of our closed meetings, just the two of us, "Could you—do you have a plan to work out whereby we can be of help to you people?"

"Yes," I said, "I have a plan for $200,000 which I would like to get from the Bureau of Indian Affairs so that we can strengthen Navajo education in terms of the organization itself for the future takeover of the Bureau of Indian Affairs education program."

And this is one of the areas which we will be working in, and there are about eleven programs in this document here, various areas of the programs which we hope to implement in the future. So these three—

ACTING CHAIRMAN HORN. Fine. They will be received for review by counsel and portions or in toto put in as Exhibit 65, due to the length.

[The documents described were marked as Exhibit Number 65 for identification and received in evidence.]

ACTING CHAIRMAN HORN. Any further comments, gentlemen? Well, we thank you so much for coming here to share your views with us. Good luck.

Now, we will begin the open session portion of the Commission's hearings, and our first witness, Lena Tsiosdia—is it pronounced?—please come forward.

Lena, if you will raise your right hand.

[Ms. Lena Tsiosdia was sworn and testified as follows.]

TESTIMONY OF MS. LENA TSIOSDIA, YOUTH DIRECTOR, GALLUP INDIAN COMMUNITY CENTER

ACTING CHAIRMAN HORN. Please be seated and the clerk will make the appropriate sign for you.

MR. GLICK. Will you please identify yourself for the record by stating your name, address, and occupation.

MS. TSIOSDIA. I'm Lena Tsiosdia.

[Navajo clan given in Navajo.]

I'm from St. Michaels, Arizona, but I'm presently residing at Fort Wingate because of my employment in the Gallup area.

MR. GLICK. Would you proceed with whatever statement you would like to make.

ACTING CHAIRMAN HORN. May I say, Lena, before you start, just as a general rule of thumb, we do have roughly ten individuals that have signed up. For the convenience of those waiting in line behind you, if we could keep each statement generally to 5 minutes, the total discussion, I think it would be appreciated by the Commission because we are going to be 2 hours behind, and some have planes to catch, and we would like to hear everybody.

MS. TSIOSDIA. Okay. Are you going to ask me questions or do you just—

ACTING CHAIRMAN HORN. Well, we would like you to tell us what is on your mind and then we might have a few followup questions.

MS. TSIOSDIA. Okay. I'm not a statistician or an expert in any professional subject. But I will give you some of my information based on my own personal experience as a Navajo and a student of day school, BIA school, mission school, and public school and, also, as an employee of the BIA, different branches, and an employee of the United States Public Health Service and as a student at the College of Santa Fe.

I would like to stress, first of all, that I am the youth director from the Gallup Indian Community Center. For the past summer I've worked with students from the universities and high schools and the program was left entirely up to what they want to do during the summer. And the most important, major items or projects that they wanted to undertake, which they felt was a need for, was to look into the four projects which were, education, community awareness, coal strip mining land, coal gassification and—I can't recall the other one right offhand.

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But one of the main issues in the community awareness was that the youth expressed a desire that they have a voice in the Navajo tribal government, the State government, and the United States Government. As a citizen of the United States, and as a member of the Navajo Tribe, they want to have a voice in all aspects of governmental functions that affect their lives, their land, their water, their education, and their way of life is being affected by all these people that have testified before you.

They are concerned deeply for their people at the grassroot level. They've seen the deplorable conditions that we exist in. There are people in the midst of the word so-called progress in our land, in our community that some of us—some of you people that work in the Government and the tribal office don't see like we do. This is why I am here and I am speaking for the youth that have love, concern, interest, sincere in heart for our people, not only the Navajos, but other tribes as well.

We strongly believe that this land is ours, the little land so-called the white man gave us back, now we call it the reservations; the little land that we've been cornered into are now being taken over by power-hungry people that want money all the time. Money. Money. And this is what I believe they call progress; to make more machines, to run electricities. This is where my heart is. This is what bothers me.

I want the tribal council to wake up. I want the tribal council—advisory council to listen. Listen hard to us, to our cries, to our needs. I am tired of the government asking money from Washington every year: "We want so much money." It's all soaked up at the administration level. That's where the problem is. That's why some of us are still hungry. That's why some of us can't afford decent clothes like the rest of them do. Fancy suits, ties, comfortable homes.

But I believe that they neglect us. They put us—our elders in the past, our old folks have told us, "Get an education. You're going to speak for us because you will know. You will learn the white man's language. You're going to learn how to read it. You're going to understand it, and we want you to come home and help us." They didn't tell us to come home and cheat them. Some of us are being underpaid. We work day and night sometimes, trying to help others that are in trouble, not only on the reservation but in the cities as well.

Well, the youth of the Navajo Nation, we understand there's a resolution now that is before the Navajo Tribal Council. We want them to pass that resolution. We want the support of the community, from the Navajo people that really mean helping people. I believe that the youth need to be involved. Therefore, I believe, like all other people are doing, our youth should be given that privilege to vote.

[Applause.]

Another thing, we have great faith in the young generation of today. We do not underestimate the older people. We value their wisdom, yes. But we believe that they should check into a lot of things before they give away land, before they give away water, before they give away their children.

I think how we feel, what our beliefs, our true convictions are will solve the problems. If we are really sincere and really have that great burning desire to help our people, we can overcome any problem. But first we have to unite. We have different laws affecting our tribal government people. Because of these laws, there's too many confusions. There's Arizona, New Mexico, Utah, and Colorado. Our Navajo people are in it. We cannot function as a tribe. Right now, I don't think we are a tribe. We are disorientated. Our minds are not together. Our hearts are not together because of different laws that the white man imposes on us. We need to make our own laws that fit the needs of our people. This is what I think and this is what I believe in.

Okay. Having faith in the younger generation, we would like to see the age requirement for tribal chairman to be lowered from 35 to 30 years old, and the tribal councilman's age from 30 to 25. We have a lot of young people that are interested in helping solve some of the problems that are caused by different laws from different States and from different policies from different governmental agencies.

I believe, as a government, as a tribe, we have to unite in spirit, in our thinking, and we must recapture our way, our Navajo philosophy where we won't have to be suspicious of one another—"who's making more money" and stuff like that. We should really be sincere in helping our people.

Right now, I think a lot of government and tribal officials are just sponging off of us, us people at the low, they called us the, grassroot. I don't know why. Maybe because we're dirtier than the rest of them. That's because we don't have running waters in our hogans. That's because we have to haul wood. We have a different way of life down here. And a lot of us still are on commodities. We eat rice morning, afternoons, evenings. We depend on the little corn that we raise on this dried up land. We depend on our livestock. We have no transportation. These are the people that Washington sends money to, but they never receive it. I never get a penny, but I don't want it. I want it for the others that need it; the others that are not educated, others that do not know, read, and understand the white man's way of living, the white man's way of thinking. This is only one portion of my main problem.

The other one is that you have heard testimonies. You had people coming here testifying, blaming the BIA, blaming different things. They have neglected one group of people, so-called the missionaries. I feel that they have a great contribution in destroying part of our way of life, our philosophy. Our Navajo songs are gone because of them. We understand the white man has their own way of religion. We like them to have, enjoy it. It's good for them. But they don't think like that for us. They say, "It's bad." They call us pagans. I've been called that once and I will never forget it—by one of the teachers or whatever she was at one of the mission schools.

We have to renew; we have to get reacquainted with our old men or old ancestors' way of thinking. That was all based on humanity. This is one of the reasons why the tribe now is all like I said, not together, because of the different denominations that are being imposed on us, upon our people. The other people, white man's religion is of more value to them. They've been taught that way. A lot of Navajos now laugh at our sings, our ceremonials. Look at the Chamber of Commerce in Gallup. They call themselves the "Ambassadors of Goodwill" and they call themselves the "Yei." I absolutely resent that. The Yeis were gods. They were part of our creations of the Navajo people. I don't think—I think, to me, that the Chamber of Commerce is making a big joke on it. I respect my religion. I don't try to be Jesus Christ.

ACTING CHAIRMAN HORN. Lena, let me ask you a question. As I understood some of your testimony earlier, you wanted to lower certain voting age limits—

MS. TSIOSDIA. Right.

ACTING CHAIRMAN HORN.—so the youth could have a greater chance to participate. What is the age limit now to vote, generally, in tribal elections?

MS. TSIOSDIA. Twenty-one.

ACTING CHAIRMAN HORN. You want it lowered to what age?

MS. TSIOSDIA. The youth want to lower it to 18.

ACTING CHAIRMAN HORN. Let me ask you what part of the reservation do you live on?

MS. TSIOSDIA. About 2 miles from here.

ACTING CHAIRMAN HORN. Two miles from here. Voting was not one of the subjects we looked at. But I was told today, and I would be curious what your experience is, that—is it difficult for some people on the reservation, regardless of age, to vote because there aren't sufficient voting booth areas available? Do you know anything about that?

MS. TSIOSDIA. I think that the participation in voting is due to the fact that the community people are not well informed on it.

ACTING CHAIRMAN HORN. Well, do you know, offhand, about the physical location of voting booths at all?

MS. TSIOSDIA. The physical location?

ACTING CHAIRMAN HORN. Yes. Where the—

MS. TSIOSDIA. The chapter communities, at the chapter houses.

Acting Chairman Horn. Where they permit people to vote. Is it in the chapter houses?

Ms. Tsiosdia. Right.

Acting Chairman Horn. Lena, we have gone a little bit over time here, and we have got a lot of people behind you. We would be glad to have you dictate the rest of your statement to one of our secretaries and have it included in the record at this point, if that would be convenient. But we have got a lot of people in the audience that are waiting to testify. Would that be convenient to you?

Ms. Tsiosdia. Right.

Acting Chairman Horn. Good. Can we see that the clerk is available to record the remainder of her statement, which we can have included in the record. Thank you. You have been a very eloquent spokesman.

Ms. Tsiosdia. Thank you for giving me the opportunity.

Acting Chairman Horn. We're delighted to have you here.

[Additional testimony of Ms. Lena Tsiosdia:

"I was trying to bring out the fact that the Chamber of Commerce in Gallup was helping to contribute in looking down at Navajo religion by calling themselves the ambassadors of goodwill and calling themselves the 'Yeis.' The Yeis are the gods of the Navajo religion and I think that the Chamber of Commerce is joking about it and degrading our religion. We respect the white man's religion. It is their way, and I believe that it is good for them. We have our own, and we should not be told by other Christian denomination how to worship because different denominations put upon the Navajo Nation to the test of unity of the tribe.

"The past summer the youth have explored and participated in the community levels in education, land, community awareness. They were there to become involved and did the jobs of some of the school personnel and elected tribal officials. We have discovered that some of the tribal elected officials did not respond to the needs of the community, in comparison to the neglect of Washington to agency needs. When our youth get involved, they were looked upon as radicals, militants and troublemakers. They say we are not ready because we are not the elected officials.

"If we deal with public schools, they say, 'Who do we represent? You do not represent the people because you were not elected,' although the people show their support in our activities and interests and get involved in them."]

Acting Chairman Horn. Would Mr. Andrew Kelly please come forward. Is Mr. Kelly in the audience? He is the next witness. Andrew Kelly, Sr. Fine. Here he comes.

Mr. Kelly, would you please raise your right hand.

[Mr. Andrew Kelly, Sr., was sworn and testified as follows.]

TESTIMONY OF MR. ANDREW KELLY, SR., EMPLOYEE, BUREAU OF INDIAN AFFAIRS

ACTING CHAIRMAN HORN. Please be seated. Let me just remind you, as I will each witness, that we are hopeful that the statements could be limited to 5 minutes. We wish that there was more time, but we are 2 hours behind and we have a problem of Commissioners' leaving unless we can get everybody out to catch planes.

Please proceed, Mr. Glick.

MR. GLICK. Yes, Mr. Chairman.

Will you identify yourself for the record, please, Mr. Kelly, by stating your name, address, and occupation?

MR. KELLY. My name is Andrew Kelly, Sr. I'm from Tuba City, Arizona. My Box Number is 527. At the present time I'm working for the Bureau of Indian Affairs in the department of plant management.

MR. GLICK. Thank you. Please proceed with your statement.

MR. KELLY. Well, tonight I'd like to elaborate on the discrimination on our promotion in our department of plant management and would like to bring out some points. Where there is a vacancy occurs, we will—our people will put in their application, and then their application is being considered to be classified, see if they are qualified.

I had witnessed, before, there was some vacancy position in the supervision capacity which the applicants put in. This position was vacant—same position was vacant and he put his application in twice. On the first two try, he was classified as being qualified. The prior of these is about within 4 years.

And since they put the force on the Indian preference, I think this is the reason why they set up so-called rating committee on the supervision rating. The committees are selected from each agency, the plant managers would be selected from. So when they do interview the candidates, I think some candidates are pretty well capable for these positions. They can carry out the duties as a supervisor. And they was acting in supervision capacities before.

And due to the language barrier, of course, the interviewer would interview from the books. They don't interview from their knowledge. They always take the book along with them. If you have to ask the same question to them, they probably don't even know it themself.

So this is the way they make their selection on the supervising capacity. This, I say, because why they set up committee is because, to counter against the Indian preference. They will not qualify an Indian even though he is qualified, due to if he does get on the certificate, he will automatically get into the position. And at the time, at the present time right now, if you do have the qualified, they still make administrative appointment from the area director, area office in Gallup. They pick who they want. They don't really rate you on your qualification, on your application, on your 171 form, and your experience and your certificate which you earn through your training. This is what I found out about filling in vacancies in supervisory capacity.

And the same way in the craftsmen. There are a lot of craftsmen on the reservation, in the Navajo Tribe. I say this because the tribe has a special program for these trades. And when these trades are becoming available, and vacancies, these candidates would be called in front of the rating committee. So when these candidates, some of them have language barrier, like I say. On these committee, I don't think they have any Navajo on the committee. If they do have a member sitting—a member of the Navajo Tribe sitting on a committee, it would be a different story. The language barrier is the main problem. This is the one that disqualified our people into the position. The capability does not; they have it.

So this is where I want to bring out this point, and also I would like to elaborate on the position where summer or temporary employees have been assigned to a job as a craftsman. But they still get paid as a laborer. These temporary employees does not—they don't get per diem on their traveling pay. I've seen a case. From Tuba City, they assigned laborers to Window Rock area; from here to Tuba City. I've seen in many cases where our workers had to sleep in their own pickup and the transportation, provided themselves. They don't have Government transportation. And this is where all the complaints and the problems is among our temporary employes. And you cannot get on the permanent employees.

These temporary employees been on this position anywheres from 5 to 10—5 to 6 years, I would say. They've been trying their best to get on the permanent position. But they always have to be laid off 1 day a year, just to get on—just to keep them getting on—from getting on to permanent position. And there is a problem with their sick leave and annual leave. I don't think they earn annual leave at all. This is one of the bad problem we have in the plant management.

And I would like now to say the control in the plant management is very poor. I've been with the plant management for 6 years now. When I first came in, they tried to improve it. And it seems to me like instead of improving they make it a real bad downfall. I think due to this is they have the move—they moved the control out of the agency, and then they move the control center in to the Gallup area office. We all believe that control should be put back under the agency. The reason why I say this—there is more money and time spent trying to approve some work orders, taking the work order over 200 miles just to get it okayed while you could just get the work order okayed at the agency level. I know with all this money they spent running around they could improve the conditions at all the Government agency schools.

And the foremen are—we've got a department called a roving crew, which we covered Arizona, New Mexico, Utah, Colorado. This crew had to be set up even though we got help and we got people that could do these kinds of work at the local area. I don't see why they have to form this roving crew. It's just a time of waste and a waste of money.

ACTING CHAIRMAN HORN. Mr. Kelly, on employment discrimination, the case you mentioned when you opened your statement, is there a grievance procedure within the Bureau of Indian Affairs whereby, if one does not get a job that he has applied for, he can file a grievance about the way he was treated?

MR. KELLY. Well, there is, yes.

ACTING CHAIRMAN HORN. Was the case you were citing your own case or other cases you have observed?

MR. KELLY. Well, I would say it's my own case.

ACTING CHAIRMAN HORN. Did you file a grievance?

MR. KELLY. Well, let me tell you what the incident happened. This place—well, this happened twice; one for one position at Leupp, Arizona, and one for Shonto, Arizona, and the third one for Tuba City, Arizona. And as far as the qualifications go, I've got a document that says I am, and they've been issuing me that I'm qualified for these positions. But ever since the preference came in, they seem to block it. And during the procedures on your grievance, I did grieve, but I never did heard from them. I did—

ACTING CHAIRMAN HORN. You never got an answer to your grievance?

MR. KELLY.—request. I did send a letter of request for reviewing my rating.

ACTING CHAIRMAN HORN. And you never heard an answer?

MR. KELLY. I never heard. I never heard an answer in writing.

ACTING CHAIRMAN HORN. Did you hear one not in writing?

MR. KELLY. Yes. We had not in writing that—where they called me into the area office. I don't think they have it in writing. They might have it in tape.

ACTING CHAIRMAN HORN. I think the situation which you mentioned is a very interesting one, and I think that is something that the Commission staff ought to explore with you because we have found, in private and public agencies around the country, there is sometimes exactly that which happens: where, for a job, they don't look at "could the person do the job," but they look at arbitrary credentials, as you cited this earlier. And I think it is the first time I have heard that point, and it is a good point, with the Navajo preference clause. Your suspicion is that because you would be automatically given it if you had made the minimum test, that there is some hanky panky here which prevents you from getting on that list.

MR. KELLY. Right.

ACTING CHAIRMAN HORN. And I would like to suggest, if you have the time, that one of our counsel meet with you now and take down the rest of your story, which we could add to the record. Regrettably, we have got a lot of people behind you and we would like to hear from as many people as we could tonight. I think you have made a very valuable addition to the record in terms of employment discrimination, and we would like to have our counsel follow up on it, if that is okay with you.

MR. KELLY. Mr. Chairman, would I make another brief statement about—

ACTING CHAIRMAN HORN. Okay. One concluding statement.

MR. KELLY. Also, when there is a vacancy in the foreman, the acting would always be picked from the area office up here. It would never be an Indian. It would be always a white. And, this, when we do get an acting foreman from Gallup, New Mexico, all the people—I mean, all the Indian employees, the attitudes just drop. There's no motivation in it.

ACTING CHAIRMAN HORN. Let me just say that you are protected in this testimony, and every witness that is testifying tonight, under Title 18 of the United States Code, Section 1505, which makes it a crime to threaten, intimidate, or injure a witness on account of their attendance at this hearing. So I hope you will share the rest of your views with one of our counsel; if Mr. Glick can arrange that, we will call our next witness. I think you have made a very valuable contribution, and I thank you for appearing.

MR. KELLY. Thank you.

ACTING CHAIRMAN HORN. Thank you.

[See Exhibit No. 67 for additional statement of Mr. Andrew Kelly, Sr.]

ACTING CHAIRMAN HORN. Will Mr. Emmet Tso please come forward?

[Mr. Emmet Tso was sworn and testified as follows.]

TESTIMONY OF MR. EMMET TSO, MEMBER, TUBA CITY BIA SCHOOL BOARD

ACTING CHAIRMAN HORN. Please be seated.

Mr. Glick.

MR. GLICK. Please state for the record your name, address, and occupation.

MR. TSO. I'm Emmet Tso from Tuba City. I'm working with ONEO [office of Navajo economic opportunity] program, local community development program, and my Box Number is 583, Tuba City, Arizona.

MR. GLICK. Will you proceed, please, but please try to be brief because we have so many people waiting.

MR. TSO. Thank you.

I will talk a little bit about the—I'm also on the school board, member of school board of Tuba City, BIA school board. I have been on the school board for about a year and a half, and after being on the board for a few months I found that the people who were saying that the school board was just there to drink coffee with the principal and other BIA officials. So I decided to go to work, and I did find problems here and there, and the problem I have found is discrimination and favoritism within the school. The favoritism with students by the officials, principals and teachers and so forth, favoring different kids that are going to school there. When they do finish school they then usually try to hire them when they get out of school. This is done through favoritism.

Some of the school board members in the community are being influenced by the school officials to be elected to get on the school board so that they could be more favorable to the school. Also I found teachers that were being favored, teachers that usually have classes for summer students. Of course, traveling mostly to something like Disneyland and other areas away from the reservation. Also favoritism is instigated in instructional aides and also friends were hired from other areas away from reservations; and, in fact, I know of one that was hired this summer that was just on a vacation in Tuba City and was hired and through telephone calls through area offices and down the line.

MR. GLICK. Mr. Tso, are you aware of discrimination against people by the BIA school because they are Navajo?

MR. TSO. Yes, I believe this is one reason why; also there is another tribe, the Hopi Tribe, usually favoritism—usually favors one tribe by these officials and the other tribe is being neglected mostly.

Qualification is usually mentioned when there is people to be hired and when the people are being hired, as we usually recommend certain people for the position, like instructional aide and teacher's aide and along that particular line; and we usually recommend people, but sometimes people aren't hired. Instead we find people that are hired without the school board recommendation and we recommended people a year ago and they are still waiting for the job, and instead other people are being hired.

I'd like to also make a recommendation. We have talked among the communities and other committees that the BIA officials, superintendent, principals, and other high officials should be rotated. Some of them are there 15 years, 20 years and some probably more, and as a school board member, the principals have told us that we really don't have no authority at all. So I guess what the people said was right, that we're just being used mostly.

That's what I wanted to say.

ACTING CHAIRMAN HORN. Well, thank you.

Are there any questions by any members of the Commission?

Thank you for sharing your views with us. We appreciate your coming here and taking your time.

The next witness is Rebecca Dotson. Will she please come forward.

[Mrs. Rebecca Dotson was sworn and testified as follows.]

TESTIMONY OF MRS. REBECCA DOTSON, ASSISTANT PRINCIPAL, MANY FARMS HIGH SCHOOL

ACTING CHAIRMAN HORN. Please be seated.

Mr. Glick?

MR. GLICK. Mrs. Dotson, for the record will you please state your name, your address, and your occupation?

MRS. DOTSON. I am Rebecca Dotson. I am the assistant principal at the Many Farms High School, which is a Bureau of Indian Affairs school, and that's Many Farms, Arizona.

MR. GLICK. Will you please proceed with your statement, but within the time limit the Chairman has established.

MRS. DOTSON. If I would have the same privilege as Mr. Dillon Platero, I have a few general comments written down.

The comments that I would like to make are maybe some of the discussions I've heard today concerning the contract schools, public school, the BIA schools. It is my feeling that—this is my personal feeling as an individual and as a Navajo—that each has its advantages and that each has the disadvantages. Though I feel that the contract school, the public school should do an outstanding job because they are supposedly doing what the local community desires.

I don't know, I don't have any statistics to say that they are not doing the job or are doing the job, but it is again my feeling that all these three schools, and I question, do they really meet the needs of the students, the Navajo students? Do we prepare our Navajo youth to be successful in a dominant society, or if he is to stay on the reservation?

There is a disadvantage in the Bureau of Indian Affairs which I feel could be corrected if, for instance, the decisions could be made at the local level rather than at the Washington level and vacancies within the Bureau could be filled instead of, like in my school system, which has had a new teacher day before yesterday, and we have been in session now for, let's say, 8 weeks. What do you suppose was happening with the classes that were assigned for this particular teacher?

I think that more monies need to be or be in the budget for more research to see how we can develop programs or how can we meet the needs of a particular community. They are all very different. You have an isolated area; you have a consolidated area; you have parents where they have no education; you have parents where they are professionals, and you have parents who have high school education, and these seem to be grouped in certain areas.

And other area that was discussed today is bilingual education. This again is my personal feeling. I feel that bilingual and bicultural, I believe were the words used—it is also my feeling that this should be made available in all of these schools and it should be by the student's choice. Many times the students prefer not to, let's say, learn their native language if they haven't and others do, but it should be made available.

This is all. Thank you.

ACTING CHAIRMAN HORN. Thank you. You have made some very perceptive observations there. We appreciate you coming to join with us. Thank you.

[Additional statement of Mrs. Rebecca Dotson:

It is my feeling that during this hearing the majority of the Navajo people is not really represented here at this hearing, by any of the institutions such as BIA, contract schools, public schools and division of education. I feel that the opinions expressed were their own. The U.S. Commission on Civil Rights could have heard testimony from Navajo parents from isolated and consolidated areas from the Navajo Reservation, and it is important because we are not getting the feeling and sentiment of the grass root people. Irene Saya came close to expressing the views of the youth and parents.]

ACTING CHAIRMAN HORN. Will Faith Roessel—

[Ms. Faith Roessel was sworn and testified as follows.]

TESTIMONY OF MS. FAITH ROESSEL, STUDENT, CHINLE HIGH SCHOOL

ACTING CHAIRMAN HORN. Please be seated.

Mr. Glick.

MR. GLICK. Will you please state your name, your address, and your occupation for the record.

MS. ROESSEL. My name is Faith Roessel and I'm a student at Chinle High School and my address is Navajo Community College, Tsaile, Chinle, Arizona.

MR. GLICK. Please proceed.

MS. ROESSEL. Yesterday or a couple of days ago as I was sitting out in the audience witnessing the proceedings of this hearing, I noticed that our school was not represented at any level whatever. A group of us students got together and said, "Hey, let's say something, we have something to say," and so I guess I was elected to come up here.

At our school an attempt last year was made to bring Navajo culture classes and language into the curriculum. At this time, however, we went through the channels and so forth until—and got approval on the way—until finally at the top we were discouraged from proceeding any further, the reason being that there was a lack of funds and also lack of certified teachers. Well, we had known that this would probably be the answer and so we had taken this into consideration and had thought of an alternative to this reason and that being that we had contacted

Navajo Community College, and they had agreed to let some of their personnel in the Navajo studies department come to our high school on a schedule that would work to the benefit of both parties and to let the students be able to have these classes held there.

But when this idea was brought up, the certification of teachers remained still to be an obstacle, and this reason we didn't really want to accept as "no" or whatever, and we tried to find some way to go about it, and we really still don't understand, for they said at our school we have courses in—called domestic crafts which deals in the girls' learning how to do traditional Navajo weaving and sash belt weaving and so forth, and under this program we have people from the community coming in and they teach the students these courses. And we thought, well, why can't we do this with Navajo language and Navajo history and culture classes?

And we did talk to the assistant principal and his reply was that under this vocational area it was permitted if you have a supervised teacher. You know, you could have these courses taught—you know, people bring in—bring them in from the community and have a supervised teacher. But as to the education part, under the language and this thing, they weren't sure what would happen.

And we come here today, I guess, to— We really still want this, and I know that you've been hearing a lot of testimony from students across the reservation and the country of this awareness of identity, and Chinle is no exception, and we are still fighting for this and we still have to, I guess, I don't know, find out more about this certification and as a part of identity as you sit there and you wonder what is to us? Well, to me it's something that is inside of you that you cannot really take away. It's something like a tree. You have a tree there and the tree, if it's without roots, the wind and the rain will come and the tree will falter, it won't be strong; it will fall. But, if you have this tree and he has roots to make him strong, the wind and the rain will come and the tree will stand there; it will be strong; nothing is going to destroy it. And that's the way I feel our culture is related to us: that it needs to be something inside of us that we can relate to and when we go out into the world, the dominant society, and get off the reservation, if that's what we want to do, or go on to college, we'll have this security inside of us to know that we are really the first Americans, that we have something to offer, that we are not just a piece of trash, or something like this.

And when we come back, we want to help our people and so forth. But so many times when this happens the student really, if he doesn't really identify himself with his people, he'll come back and he'll say, "I've got a degree, I want to help my people." But then it will just stop there. They don't understand it. They might go into a hogan and they want to help maybe somebody, but they don't understand what's going on, what's taking place inside. And you need this understanding to be able to work with the people.

You can't—you just can't say you're there and you are going to save the nation or whatever. And so, I guess I've strayed away from the topic or whatever, but at Chinle we do really want to have this program and we really would like to, if you could find out somehow for us how this certification, this sort of thing takes place, because we did one time have a prominent educator call up at the office, the superintendent of public instruction, and he said in effect that there was no really set rule of this and then they say there's a rule, and there's so much mixup.

MR. GLICK. Could you identify again the school that you are referring to, Faith?

MS. ROESSEL. Chinle High School.

MR. GLICK. Chinle High School?

MS. ROESSEL. That's right.

MR. GLICK. Is that a BIA school, or public school or—

MS. ROESSEL. No, it's a public school.

MR. GLICK. It's a public school. Thank you.

ACTING CHAIRMAN HORN. Chinle, Arizona?

MS. ROESSEL. Yes.

ACTING CHAIRMAN HORN. And which county is that in?

MS. ROESSEL. That's in Apache County.

ACTING CHAIRMAN HORN. In Apache County. I think, counsel, as an exhibit of the record, let's get the actual credentialing laws of the States of Arizona, New Mexico, and Utah, since they pertain to this question, and write the State superintendent of schools, if an individual was to be hired by a school district to teach Navajo studies, cultural studies related to Navajos or any other Indian tribe, what is the procedure in each of these three States that one must go through to get such certification if they did not already have the appropriate college degree or teacher's credentials, because in some States there is a way to get a special credential given to a person for a specific purpose, and I think since this question has come up so much throughout these hearings that we ought to lay down a proper record, and I would suggest since the Government Printing Office takes an awful long time to print our hearings and these exhibits that once we have the answer the General Counsel's office communicate directly with Faith so she will have that information on the State of Arizona.

[This information is on file at the U.S. Commission on Civil Rights.]

MR. GLICK. Would you leave your mailing address with the clerk, please, so we can communicate with you what kind of response we get?

Ms. Roessel. Yes.

Acting Chairman Horn. Thank you very much. I can see why your peer group selected you. You are a very eloquent spokeswoman.

Will Glenn C. George please come forward?

[Mr. Glenn C. George was sworn and testified as follows.]

TESTIMONY OF MR. GLENN C. GEORGE, MEMBER, NAVAJO TRIBAL COUNCIL

Acting Chairman Horn. Please be seated.

Mr. Glick.

Mr. Glick. Mr. George, will you please state your name, address, and occupation for the record?

Mr. George. My name is Mr. Glenn C. George. I am a retired sergeant of the United States Air Force. I am elected as a Navajo Tribe council member. I represent Tuba City, Arizona.

Mr. Glick. Thank you. Will you please proceed with your statement.

Mr. George. I'm here with a lot of complaints, but I narrow them down to three. I'd like to at this moment, Mr. Chairman and members of the Commission, my number one complaint is pertaining to superintendent at Tuba City. The position of Tuba City superintendent has been vacant since last year. In fact, August of last year.

Mr. Glick. Is that the Tuba City BIA school you are referring to?

Mr. George. Yes. Tuba City agency.

Acting Chairman Horn. It's the agency, not the school? Oh, I'm sorry.

Mr. George. Ever since the former superintendent transferred to Washington, D. C., we've been getting some kind of runaround because there's no superintendent. There is always an acting superintendent. It's not always the same person, always a different person. It's either a gentleman from plant management or branch of operation or administrative assistant or supervisor of property supply.

Tuba City Chapter has adopted resolution requesting that the superintendent will be hired, preferably an Indian. Also, Tuba City agency adopted a resolution asking the Bureau of Indian Affairs to hire a Navajo superintendent. To this day there is no superintendent. I have documents right here to back up my statement. I'd like to, if I may, read one of the resolutions that was passed by the Tuba City Agency Council:

"Resolution of Tuba City Agency Council: Requesting the Commissioner of Indian Affairs, Louis R. Bruce, to appoint Leo Haven to fill the vacant position of Tuba City agency superintendent. Whereas, (1), there is a vacant position for Tuba City agency superintendent; and (2), President Nixon's message in 1970 for Indians to control their destiny and self-determination; and (3), Mr. Leo Haven has submitted appropriate application and he is qualified for this position; and (4), on September 24, 1972, at a duly called Tuba City Chapter meeting, Tuba City, Arizona, the people of Tuba City community voted unanimously recommending Mr. Haven to be appointed superintendent of Tuba City agency.

"Now, therefore be it resolved, the Tuba City Agency Council hereby recommends and requests the Commissioner of Indian Affairs to appoint Mr. Leo Haven to fill the vacant position of Tuba City agency superintendent."

I'd like to with your permission, Mr. Chairman, that I submit this to be an exhibit for the record.

ACTING CHAIRMAN HORN. You have read all of it, haven't you?

MR. GEORGE. I'd like to with your permission also, there's a letter supporting these resolutions. There's another attached resolution; I'd like it to be part of the record also.

ACTING CHAIRMAN HORN. Well, it will be received by counsel and kept in the files of the Commission, since you have read the whole resolution. You had another topic I think you wanted to mention.

MR. GEORGE. Yes, I've got a number two complaint similar to Andrew Kelly. This hiring procedure at Tuba City is in somewhat and such—that the hiring procedure seems to be getting out of hand. Today, so far as Indian ratio against Indian, there is more Hopi working in Tuba City agency than the Navajo. At the Moencopi Village, south Tuba City, approximately 800 Hopis are living in that village and there is approximately 25,000 Navajo people in Tuba City agency. So there is something wrong somewhere. I'd like to ask the Commission to check into this and investigate and see what's wrong.

I'd like the Commission to know that in my case back in 1966 after I retired from the United State Air Force, I applied for a job. It was a building repairman. Two weeks later the application was mailed back to me with a little note, "I'm sorry you are not qualified. There is a position open for a janitor." This is the kind of reply that I got and I'm in specialized—

ACTING CHAIRMAN HORN. Who did you get that from? Do you recall?

MR. GEORGE. It was a gentleman by the name of Mr. Jacobson. He's a plant management at that time at Tuba City.

ACTING CHAIRMAN HORN. You feel there was discrimination practiced on that case or was it just stupidity or what?

MR. GEORGE. I think the combination of both. I'd like to make a statement also that due to the—the other reason that I just—so far as the superintendent and this particular thing I am talking about, there is a bottleneck at the BIA office here in Window Rock. There is additional bottleneck in Gallup office. I think the problem lays right there.

ACTING CHAIRMAN HORN. This is a bottleneck now in what sense? You mean just anything that comes from the reservation from the tribe or chapter?

MR. GEORGE. So far as hiring, so far as Navajo preference, so far as hiring, for a high position like superintendent, principal, and the others. I don't know how some of these Navajo are hired as a principal and superintendent. Somebody dropped the ball somewhere. This was done back 3 or 4 years ago.

ACTING CHAIRMAN HORN. Well, thank you very much. Are there any question by my colleagues?

Thank you very much.

MR. GEORGE. I'd like to—one more here with your permission. I feel that this is very important.

ACTING CHAIRMAN HORN. Is this on the land dispute? I noticed that was marked down.

MR. GEORGE. Yes and no. This is where a home burned out.

ACTING CHAIRMAN HORN. Okay. the Commission decided not to go into that issue for various reasons, since we are not taking testimony from both sides. But go ahead.

MR. GEORGE. Well, at this particular place where there was a home burned out about 4 or 5 weeks ago, this particular location, Navajo has jurisdiction. It's a 1934 boundary area, but the Hopis deny the homeowner to rebuild his home. I don't think that's right. Somebody should check into it and I'd like to ask the Commission to look into this and see what kind of a situation we're facing at Tuba City.

ACTING CHAIRMAN HORN. We had testimony yesterday on the commercial economic development of one city. I have forgotten, counsel, if that was Tuba City—

MR. GLICK. It was.

ACTING CHAIRMAN HORN. It was Tuba City where the Bureau of Indian Affairs has said, no development until the dispute is settled. Am I correct?

MR. GLICK. Correct.

ACTING CHAIRMAN HORN. I suspect that is part of the problem.

I would hate to raise false expectations. I doubt if the Commission can really do much about that since that's a matter that is in the Federal courts, as I understand it. In terms of pursuance of the policy the council might explore it with the Commissioner of Indian Affairs, but I wouldn't want to mislead you and get your hopes up.

MR. GEORGE. Well, let me mention another thing, if I may, with your permission. There is a court order by a Federal court. This is pertaining to the Executive Order known as 1882. In this court order the order is saying that the Navajos will move 50 percent of their livestock. The Navajo lives on these livestock. They don't have no other job and I don't think this is right either.

ACTING CHAIRMAN HORN. I would like counsel to get that relevant order and show it to members of the Commission at the next meeting because I don't think we are faniliar with it.

MR. GLICK. I am not at all.

ACTING CHAIRMAN HORN. Well, thank you very much, Mr. George, for appearing here this evening, we appreciate it.

MR. GEORGE. Thank you. I wish I had more time.

ACTING CHAIRMAN HORN. I wish you did too.

MR. GEORGE. Thank you for giving me the opportunity.

ACTING CHAIRMAN HORN. I think you've made a good point on this employment situation again, and we will follow up just to see what is involved in that particular Executive order because, frankly, I'm not familiar with that one, and I'd like to become familiar.

Will Marie Reyner please come forward.

[Ms. Marie Reyner was sworn and testified as follows.]

TESTIMONY OF MS. MARIE REYNER, TEACHER, CHINLE PUBLIC SCHOOLS

ACTING CHAIRMAN HORN. Please be seated. Mr. Glick.

MR. GLICK. For the record will you please state your name, address, and occupation, Miss Reyner?

MS. REYNER. My name is Marie Reyner. My address is Box 739, Fort Defiance.

MR. GLICK. Will you please proceed with your statement.

MS. REYNER. Well, I guess this pertains to my teacher evaluation at Chinle. Last year I was there and—

ACTING CHAIRMAN HORN. You were teaching which grade, Miss Reyner?

MS. REYNER. Pardon?

MS. REYNER. What grade were you teaching?

MS. REYNER. I was in kindergarten.

ACTING CHAIRMAN HORN. Kindergarten.

MS. REYNER. Teaching kindergarten in a public school.

ACTING CHAIRMAN HORN. All right.

MS. REYNER. And this was the first time I had accepted a position in a public school system as a teacher. Before that I was at Rough Rock School. And—I don't know where to begin, but I think the main thing I'm up here for is that I was told by the administration there that I could not utilize the Navajo language, or you know—there was about 90 percent,—if not 98 or 99 percent, of the students who were Navajo, and most of the kids there were right around that community with more Navajo language background. They didn't have much English background, except the kids that had parents that were teaching there in the BIA or public schools.

And the only way I could communicate with these kids was through the use of their native language, which I spoke. Like I said, about 98 or 99 percent of them were Navajo. And this was the first year in school and a lot of them came out from the hogans, and I had to use some Navajo words to communicate with them; and, in order to motivate them to learn their number systems or some words and concepts, I used some of the Navajo concepts and used the Navajo numbering and so forth to motivate them to learn.

And one day I was called to the principal's office and was told that this was wrong, that I was violating a law in Arizona—an Arizona State law, which was written, that I was violating ARS 15-20 law in using my native language to teach this class.

ACTING CHAIRMAN HORN. Do you have a copy of that law with you, do you?

MS. REYNER. No, it's just the number.

ACTING CHAIRMAN HORN. Well, let us get that and let us insert it in the record as Exhibit 68.

[The document described, to be marked Exhibit No. 68 for identification, was received in evidence.]

MS. REYNER. And I said, "Well, how else would you like for me to teach this class because this is the only language they know?" And the principal said that—she said that, "Well, we don't need the Navajo language. The parents send their kids to school to learn English and this is what they want, and we don't have a bilingual program, and we don't need it." And yet we were right in the heart of the reservation, right in the midst of the people where a lot of these people have traditional background and that was the only language they spoke.

I said, "But this doesn't make sense, I know they need this." I said, "The school should reflect the community." She says, "No, it's not true."

And so they said, "If you want bicultural education you have to submit to us, maybe write out bicultural program thing to present to the board so we can follow or go by that to use that in our school system." And they gave me a thick book about that thick [indicating] and they said just like any other schools in the southern part of Arizona they had done this, and yet I couldn't do it all alone because when I looked through the book all these various professors from universities have gotten together to write this bicultural approach booklet for some certain school system, and I couldn't do it just in my own time or just me as a teacher, I guess.

And so the next time I talked to the assistant principal, he says, "Why don't you join the curriculum meeting and bring this up?" So I did, and we wrote up a proposal, a one-page proposal, stating why we need this and explained it and it was unanimously voted on that this was what we need and it was passed by the teachers organization, and it was supposed to have been presented to the board, but I'm not really sure if it really was presented to the board. And I talked to the superintendent about it, and he said he favored it, but I think he only favored it just to get me out of the way or to make me—keep me from going up there and asking them about it, just to get rid of me. And they put this down on my evaluation and it just kind of took down my average rating.

ACTING CHAIRMAN HORN. They put what down? That you had advocated this approach to teaching?

MS. REYNER. Yes, and that I was going against their rules and regulations and that I—well, when I went back to the classroom they started coming in sort of harassing me every day. They took turns and watched my classroom—

ACTING CHAIRMAN HORN. They is who? The principal, the vice principal?

MS. REYNER. Yes, both of them, they took turns.

ACTING CHAIRMAN HORN. Anybody else?

MS. REYNER. Just them. And they took turns. They were in my class to see how I was carrying on the class, I guess, and I didn't know what to do. It was— Sometimes it got to me and other times I had to ignore it, but it was just sort of an unusual situation and I—just like this young lady from Chinle High, I know exactly what she is talking about.

MR. GLICK. Are you the only Navajo teacher in that school or are there others?

MS. REYNER. No, there were two or three others, but they never brought up this idea that we needed this bilingual or bicultural approach to the teaching these kids.

MR. GLICK. What is the name of the school?

MS. REYNER. Chinle public school.

MR. GLICK. Just Chinle public school?

MS. REYNER. Yes. This was an elementary.

ACTING CHAIRMAN HORN. Do you have a copy of that document you are holding available to furnish the Commission?

MS. REYNER. This is the only copy I have.

ACTING CHAIRMAN HORN. Well, I wonder if we could have a Xerox made and I would like that added—

MS. REYNER. I asked for other copies that was more readable, but they didn't give it to me.

ACTING CHAIRMAN HORN. That's okay. Don't worry. I would like that Xerox included as part of Exhibit 68. In addition, I would like the counsel, just so we have the whole record laid out on this issue, write the principal of the school and ask if the proposal was ever taken to the board of education and what happened to it. Just so we get the record straight on this because I've just read the law in the State of Arizona on this.

Well, thank you very much for sharing your experience with us.

MS. REYNER. Thank you.

ACTING CHAIRMAN HORN. Will Tom Tippeconnic please come forward.

[Mr. Thomas Tippeconnic was sworn and testified as follows.]

TESTIMONY OF MR. THOMAS TIPPECONNIC, ACTING NATURAL RESOURCES MANAGER, FORT DEFIANCE AGENCY

ACTING CHAIRMAN HORN. Please be seated.

Mr. Glick.

MR. GLICK. Mr. Tippeconnic, will you please state your name, address, and occupation for the record?

MR. TIPPECONNIC. My name is Thomas Tippeconnic. I am acting natural resources manager for Fort Defiance agency. My mailing address is 437, Fort Defiance, Arizona.

MR. GLICK. Will you please proceed with your statement, Mr. Tippeconnic.

MR. TIPPECONNIC. I'd like to make a statement. My work deals with natural resources on the Navajo Reservation, and I am very concerned about many of the problems that we have in these areas in land use. So my statement will be in that area.

On this reservation our land problems are becoming very complex. Use of land is unrestricted. We do not have adequate regulations to take care of a lot of things on land use on this reservation, home sites. We're running into land disputes. Every time we take land out of agriculture use and put it into different uses, like the right of ways of highways, business site leases, anything out of the traditional use of grazing, we don't have regulations that cover a lot of these areas. The tribal committees that are working in these areas really can't resolve the problem because they don't have regulations or backings to resolve them. And because of this we have ineffective committees, tribal committees, trying to act on matters which they don't have guidelines to really make decisions on.

Then there are also political barriers that prevent change of present regulations to really do the job we have to do with people in land use. This political barriers are things like old guidelines or policies the Bureau has, tribal guidelines, tribal regulations, these types of things.

And then there's a question about priorities in land use with communities. Our priorities always seem to be taken hold of, the upper administrative levels like the Window Rock level. What are the priorities on the Navajo Reservation? Window Rock says we have these priorities. The Navajo Tribe says we have these priorities, but the community level, they have their own priorities. Somehow in the planning process we never get down to the local chapter community level to establish what priorities we're really dealing with. And somehow in reorganization or changes we need to be able to allow the people at this level to make their own decisions, set their own priorities and provide them alternatives so they can really choose their own destiny or work their own self-determination out as a people.

MR. GLICK. Mr. Tippeconnic, doesn't BIA give technical information to the tribal council on which they can base their decisions on land use?

MR. TIPPECONNIC. This is very limited. I think, as we find out in Indian affairs, your natural resource organizations are really at the bottom of our list in what we deal with Indian people, mainly because you have a lot of interest in things like education, social services, relocation—these take all the emphasis because they are easy things to do. When you deal with land use problems you are getting into some real conflicting areas in which the Navajo Tribe itself has trouble with its own people. But I really believe that somehow the Bureau of Indian Affairs and the Navajo Tribe itself has got to give authority and responsibilities to your local communities so they can make a lot of their own decisions.

ACTING CHAIRMAN HORN. Excuse me. Are these land areas that well known based on the local community? How would you see this, drawing a geographic area around say where present chapters are located of the tribe?

MR. TIPPECONNIC. Yes.

ACTING CHAIRMAN HORN. Could there be agreement between chapters as to where that land line is drawn?

MR. TIPPECONNIC. Presently we don't have this established definite chapter areas, agreement between chapters. We do have what they call graze and administration lines that were set up for administration of grazing land and through the years, I think, people recognize these lines as chapter area lines.

ACTING CHAIRMAN HORN. Do we have a map on that that shows those lines?

MR. TIPPECONNIC. Yes, we do.

ACTING CHAIRMAN HORN. I think it would help if that was secured from the Bureau of Indian Affairs and put in as Exhibit 69, because I've been curious where these geographic boundaries are, and our maps aren't too clear at this point.

MR. GLICK. Can do.

[The information described is on file at the U.S. Commission on Civil Rights.]

MR. TIPPECONNIC. In looking at these changes we need, we're looking at some real changes, not only in the Bureau, we're looking at changes in the tribe, because once—the authority and everything has to come from the tribal organization, the tribal council, before communities can get this kind of authority. So we're looking at something that is controlled by your tribal organization. And I think, as far as the Bureau goes, in natural resource programs we're in the trust responsibility area where we are in the area of management and protection of tribal resources.

Now, our type of program, because of demand on land from tribal groups for various things, minerals, housing, different uses altogether, is so great that we need to have a more aggressive and active program in natural resources to take care of these needs to protect these resources and make sure that we get the best technical information to people in the community levels so that they can have the opportunities for correct decision-making processes. Under the present setup, without this, really the people at the local level really are not given the opportunity to really get involved in different areas, businesses, even to improve and do things on their own. The self-determination is just not there. There's no way they can accomplish this. We always seem to be a step higher than the local community and the people themselves.

ACTING CHAIRMAN HORN. You are saying they need information as to what their choices are?

MR. TIPPECONNIC. Right.

ACTING CHAIRMAN HORN. And number two then, they need the capacity to come together and make decisions that are affecting their future?

MR. TIPPECONNIC. Right. And they need the authority and responsibilities to do this.

MR. GLICK. Could a chapter come to the BIA and ask for information?

MR. TIPPECONNIC. Yes, chapter officers do. We get resolutions through your local chapters and we try to respond to them as best we can with the staff we have in the agency levels, but this is not really possible in a lot of areas because of the social problem, is really something that in natural resources it's very hard to work these out in the natural resources programs.

But I think these areas, or some of the areas I think it could be accomplished where the community has the authority. The Bureau of Indian Affairs could provide a greater service, technical service or any other service, to meet the priorities of the local communities.

ACTING CHAIRMAN HORN. Very good.

Any comments?

Thank you very much. You've given us a new dimension which we really haven't gotten into too much in these hearings and we appreciate it.

Our last witness is Stan Milford. Will he please come forward.

[Mr. Stan Milford was sworn and testified as follows.]

TESTIMONY OF MR. STAN MILFORD, SUPERVISOR, GUIDANCE DEPARTMENT, TOYEI BOARDING SCHOOL

ACTING CHAIRMAN HORN. Please be seated.

Mr. Glick.

MR. GLICK. Mr. Milford, will you please state your name, address, and occupation for the record?

MR. MILFORD. Stan Milford, Toyei Boarding School, Ganado, Arizona, and I'm supervisor of guidance department, which has to do with a student living capacity in the boarding school.

I think everybody said what I wanted to say but I'll just finish up with a few sentences. My particular, you could say, complaint is that the facilities that's provided for the schools today in the BIA. I have gone to BIA schools and that's been my whole life. I have graduated from BIA school, but I have gone to college in the public school system. And I have been with the BIA school ever since I've graduated from college, and I was a classroom teacher at one time, but I feel that my people need me out on the reservation and this is my reason that I've stayed with the school system and the BIA although there's been a lot of handicap in terms of lack of funds and so forth. The facilities are my main concern. I have graduated from BIA high school back in the fifties—

ACTING CHAIRMAN HORN. Which one?

MR. MILFORD. In Oklahoma, Anadarko, Oklahoma.

And the facilities I had back—the point I want to make is that back in the fifties when I graduated from high school I had it better than the schools that are now on the Navajo Reservation. The facilities are way out of line. It's not homely as it should be for these kids, and many stories that you've heard is that there is adequate facilities and proper facilities that accommodate these kids in a homelike atmosphere. Well, I don't believe this is true because I work with the system and I'm among those dormitories almost 365 days a year and still the improvement is not there.

There can be improvement but—and I'm talking about the dormitories, and then I go out to the playground areas. There's no—any precautions or any preliminary measures as to how playground equipment should be set up.

ACTING CHAIRMAN HORN. Let me ask you, do you know off hand if BIA schools are accredited by the accrediting association of the area?

MR. MILFORD. Many of the kids that finish our grade school, let's say our 8th grade, they go on to high schools and they continue their education.

ACTING CHAIRMAN HORN. The reason I asked this, counsel, I think you ought to follow up with the Bureau of Indian Affairs, ask them if these schools are accredited by the, say, the Mountain States Association, or whatever it is, and let's see if the accreditation reports reflect the problems that you state in terms of the physical situation and so forth.

MR. GLICK. Will do.

ACTING CHAIRMAN HORN. Good.

Well, we appreciate you sharing that idea with us, and I hope we can follow up on it. Did you have anything else? Because we found we have one more witness and we're getting pinched on time.

MR. MILFORD. Maybe one small sentence here. It's just that the existing funds and existing materials are tools that is on hand and can be utilized where it can provide adequate or improved playground areas for our schools. I'll illustrate one example, that this year some of our kids played on ball fields on a sloping hill where they could have come in with a heavy equipment machines and improved it and made it a better playing area. These small things, things like this.

Acting Chairman Horn. It's a good idea and this was suggested by one gentleman earlier today that they ought to make greater use of the students relating theory and practice by helping build facilities that they could use while they are at school. I think it's a good suggestion.

Mr. Milford. I think so.

Acting Chairman Horn. Thank you very much.

Mr. Milford. Thank you.

Acting Chairman Horn. Our last witness is Mr. Maynard Stanley, who has been left off the original list accidentally.

Mr. Stanley, will you come forward, please.

[Mr. Maynard Stanley was sworn and testified as follows.]

TESTIMONY OF MR. MAYNARD STANLEY, COORDINATOR, AMERICAN INDIAN MOVEMENT

Acting Chairman Horn. And then at 9:15 we will begin reading the closing statement.

All right, sir, please be seated.

Mr. Glick.

Mr. Glick. Mr. Stanley, will you please identify yourself for the record by stating your name, address, and occupation?

Mr. Stanley. My name is Maynard Stanley. My address is Box 92, Window Rock, Arizona, and my occupation is national coordinator for the American Indian Movement for the Southwest.

I'd like to briefly bring up some cases in point that happened recently here on the reservation. We recently had a number of our people arrested, local people, in Lupton, Arizona, for allegedly murdering a sheriff in Apache County, and we felt that these charges that they brought against these individuals were prefabricated by the sheriff's department and law enforcement officials that were involved in it. We relayed our feelings to Lafie Bennett—he's now resigned—and also to the Gallup officials and many tribal officials.

We said that the American Indian Movement was an organization that spoke up for their people. We're willing to die for their rights if necessary. This is the position that we have taken on more than one occasion. Although that's not our only position that we take. It turned out that we were right when we said that they hadn't committed this murder. So subsequently they were released.

Acting Chairman Horn. How long were they incarcerated in jail?

Mr. Stanley. Approximately 4 days.

Acting Chairman Horn. Was bail set at all?

Mr. Stanley. None whatsoever. They were not given counsel. They weren't allowed to make phone calls because they all knew our office telephone number. We have attorneys. We have money to get people out of jail. We didn't receive a word until we finally found out that they were released.

We did send people down to St. John where they were being held, and some sheriffs approached the people that went there and held guns at their heads—this has been documented and we have witnesses for it—and they simply went down there to find out why they were being held, what the bond was and everything involved with it, and they were surrounded by police at gunpoint and they were told to leave immediately or they would possibly be shot.

Mr. Glick. Have you ever brought this case or this situation to the attention of the United States Department of Justice?

Mr. Stanley. We brought it to the attention of the Department of Justice, the Civil Rights Commission—well, not this Commission—

Acting Chairman Horn. How about the Arizona State Attorney General?

Mr. Stanley. Yes, we did.

Acting Chairman Horn. And the Arizona Civil Rights Commission? Have you brought it to their attention?

Mr. Stanley. I believe the attorneys did, yes.

Acting Chairman Horn. Ford Smith, the executive director, was here just 2 days ago. So you have filed the appropriate papers on this for an investigation?

Mr. Stanley. Yes.

That's just one incident.

Acting Chairman Horn. Right.

Mr. Stanley. We felt—or the local community people felt—that the younger people of this community and the surrounding communities of the Navajo Nation should band together and to put their minds together as one and put a camp together.

They could have spiritual meetings. We had older people come to this particular camp. We call it the Red Arrow Unity Camp, and it was at Sawmill, Arizona. There was no violence there, no drugs, no liquor, no guns of any sort, because we had our security set up. It was on TV. We showed on TV that the alcohol that we did confiscate was thrown in the ground. All arms, which were very few, were turned back and the people that had the arms were told to leave, and they did.

The thing that I'm referring to at the camp was they were looking for fugitives. The FBI were looking for fugitives concerning the Lupton incident, and they came to the camp one morning early and they didn't even identify themselves. They took the people that were in the house—

ACTING CHAIRMAN HORN. This is Federal agents or State agents?

MR. STANLEY. Federal and BIA police.

ACTING CHAIRMAN HORN. So you are saying that the Federal Bureau of Investigation and the Bureau of Indian Affairs police—

MR. STANLEY. This is what we found out after the incident.

MR. GLICK. Can you give a date on that, Mr. Stanley?

MR. STANLEY. No, I could forward it to you. I just came back from a road trip and I couldn't get all my papers together.

ACTING CHAIRMAN HORN. Do do that and we will add that information as Exhibit 70. If you will provide Mr. Glick he can write you and get the details.

[The information described is on file at the U.S. Commission on Civil Rights.]

MR. STANLEY. Right.

There's one more incident. In conjunction with the laws of the Navajo nation, we thought that it was necessary to keep an open line open to the police on this reservation and we were assured by Lafie Bennett that at any time we could approach the police to talk about any problems.

ACTING CHAIRMAN HORN. Would you identify who he is?

MR. STANLEY. Lafie Bennett was the superintendent of police, I believe—superintendent or chief.

ACTING CHAIRMAN HORN. Was he the chief of police?

MR. STANLEY. He was the chief at the time.

ACTING CHAIRMAN HORN. He was the chief of police at the time?

MR. STANLEY. We went there one evening because we were concerned about the safety of some of the people that might be in the Lupton area because they had a manhunt for these so-called fugitives, whoever they were looking for, and we went there to ask the chief to either call off the search or to make sure that the people were in good hands if they were apprehended because we've had bad experiences with police around this reservation for 100 years now.

We went to the police station, and I had never noticed a lock on the front door, but there was a lock and it was locked. So we knocked on the door and there was a bell—we rang the doorbell, and the Navajo police came to the door, let us in, and we were approaching the communications booth to ask where the chief was and they said that he wasn't in, he was out on a search—that he wasn't in, period, he was home. We said we knew that he wasn't home because we just came from his house and his wife had told us that he was out on the search, and we asked them to call him on the police intercom, the police radio, and to ask him to come to speak with us. About a few second later, approximately 10 to 12 armored State police came in—do you know where the police station is; how big the corridor is?

ACTING CHAIRMAN HORN. Is that the modern building right up here?

MR. STANLEY. Right.

ACTING CHAIRMAN HORN. I did see it, yes.

MR. STANLEY. It's not a very big room when you walk in. It's probably 50 by 50, that hallway, and about 10 to 12 heavily armed State police came in. They had riot gear on; they had helmets on; they had bullet proof vests on, and they had shotguns. And I was there and the treasurer of the chapter of the American Indian Movement was there, and two other individuals. I don't remember their names, but it's on record too.

They held guns to our heads, and they locked the door in back of them when they came in, and they told us not to move or they would shoot us. We had short-sleeve shirts on, I think all of us, and it was evident we didn't have any guns or anything, not even a knife. One of our people went into the bathroom before the police had come in and when he came out there was a gun being pointed at his head, and they held us approximately 5 to 10 minutes, and they didn't allow us to move.

What I'm saying, and I'm going to take up some time, what I'm saying is this: What right do the State police or the FBI have to come in and ripping off people from the streets without even identifying themselves?

ACTING CHAIRMAN HORN. Well, I must say I was curious the minute you said State police; I wondered what their rights are on an Indian reservation.

Mr. Glick, as part of Exhibit 70, I think when we get this information from Mr. Stanley, let us pursue that with all groups that have been mentioned, which include the FBI, the Arizona State Police, the Navajo Tribal Police, *et al.*, and get a complete documentation on this incident.

MR. STANLEY. And especially the Bureau of Indian Affairs Police.

ACTING CHAIRMAN HORN. All right.

I didn't realize there's a separate—there are two police forces then here?

MR. STANLEY. The Bureau of Indian Affairs do have police here and they are the ones that brought the FBI police to the camp.

ACTING CHAIRMAN HORN. Mr. Stanley, we will pursue it. If you will—we have one of our associate counsels here. If you will give him full information we will then follow up on it.

In our earlier hearings, I believe, Mrs. Freeman, you looked into some cases of administration of justice off the reservation. While this was not part of this formal set of the hearings, we will add this to the record, and the Commission General Counsel will follow up and just see what did occur and make this a part of this record.

But we have not spent time in this hearing on administration of justice. We do know, from our experience around the country, voting, housing, education, employment, public accommodations, that the area where I think the Commissioners have a feeling that the least progress has been made is in the area of the administration of justice. So if you will talk to the Associate General Counsel, we will get that documentation, and we do thank you for joining with us.

MR. STANLEY. Thank you.

ACTING CHAIRMAN HORN. Thank you, Mr. Stanley.

Now, ladies and gentlemen, on behalf of my colleagues on the United States Commission on Civil Rights, I will read this closing statement which we agreed to 2 hours ago.

As we conclude this hearing, I'd like to take a few moments to review some of the testimony we've heard and to explain where we go from here. In the past 3 days the United States Commission on Civil Rights has learned a great deal here in Window Rock, the capital of the Navajo Nation. Some of it is encouraging, but much of it has been extremely distressing.

The testimony we have heard, for the most part, paints a dismal picture of the manner in which the Federal Government executes its role as trustee of the Navajo Tribe. Despite a clear policy enunciated by President Nixon in 1970 which favors self-determination for the Indians, we are told of undue delays in securing Bureau of Indian Affairs approval at the Washington level for some of the resolutions adopted by the Navajo Tribal Council. Every tribal resolution must be approved by the BIA. Navajo Tribal Council Chairman Peter MacDonald concluded, after 3 years in office, that it appears that all too frequently when the tribe decides to do something, the Federal bureaucracy holds it up. And, this, as he put it, can be devastating.

We agree. Self-determination for Indians is not achieved by self-procrastination by Federal agents, no matter how well meaning some might be. In addition, it appears that there must be greater internal communication within the Federal agencies so that the views of those in the field carry greater weight at the Washington level where basic budgetary decisions are made.

We learned, also, that in matters of vital concern to the economic and social development of the Navajo, such as paved roads on the reservation, the tribe may not approach the logical source of Federal assistance. Because of the authorizing legislation, the Federal Highway Administration, for example, cannot negotiate with or provide grants to tribal governments. This same legislative policy, we are told, has recently resulted in the levying of an excise tax against the tribe for the purchase of police vehicles—this time because tribal governments are not mentioned along with those of the States and the counties in the Internal Revenue Service's list of exempt political entities. Some of these problems, no doubt, stem from legislative oversight rather than deliberate policy. But the results, of course, are no different.

The Commission will seriously explore recommending that Congress amend all relevant authorizing legislation to provide that Indian tribes which occupy specific geographic reservations be granted a status for fundings similar to that now held by States and counties. This is particularly urgent as America seeks a more decentralized society wherein individuals can have an opportunity to make many of the decisions which affect their daily lives.

We have further explored the problems of the Indian Health Service, which we first studied last year during our hearing in Albuquerque and Phoenix. We heard from a dedicated professional staff. They are overworked. There are insufficient hands, equipment, and beds to provide the type of preventive and basic health care needed by a generally impoverished people. Although progress has undoubtedly been made since the Indian Health Service in the Department of Health, Education, and Welfare assumed responsibility from the Bureau of Indian Affairs in the Department of the Interior, it is also clear that a much greater emphasis must be given to adequate health care by all Washington funding resources.

Special mention should be made of one topic to which the hearing devoted considerable time and attention: the education of Navajo children. Testimony on this subject ranged from the expressed need for bilingual-bicultural education to the culturally-related problem of dress codes.

From one panel we heard how students took over a school building last year in order to force changes in the curriculum and other areas of school life which they believed necessary; a rather unusual occurrence on the reservation. It goes without saying that such action is usually not the best course to secure redress of grievances and is almost always fraught with danger. It is, nevertheless, important to recognize that the student actions occurred because of too long neglected or delayed change in the nature of education provided for Navajo youth.

The low level of educational attainment, the high dropout rate, and the apparent determination of Navajo students to improve their situation—as evidenced in part by their appearances here both as witnesses and observers—all of this seems to us to require that serious consideration be given to the eradication of the existing multiplicity of school systems on the Navajo Reservation. Federal Indian education policies should be revamped with a view to providing more opportunity for Navajos to demonstrate their capacity to control their own educational institutions instead of continuing a series of Federal, State, county, and community systems which are often competing, conflicting, confusing, and overlapping. Without the provision of adequate education and economic opportunities, the future of Navajo youth—and that includes the great majority of the tribe today—will be dim, especially since Navajos now have a present average level of education attainment of 5 school years versus over 12 for Americans generally, and a combined rate of underemployment and unemployment of 60 percent versus 6 percent for Americans generally.

The Commission is particularly concerned about the future of economic development on the Navajo Reservation. Even though the tribe has significant natural resources in coal, oil, timber, and uranium, it does not, itself, possess the capital necessary to exploit these resources. In the absence of adequate Federal assistance, the tribe has entered into lease and royalty arrangements with private industry on terms of questionable advantage to the tribe. While the present chairman of the tribal council has begun activity designed to create a more effective economic development program, it is, as yet, far from realization.

It is also clear that greater attention must be given by tribal government, private employers, labor unions, and relevant Federal and State agencies to an aggressive recruitment, employment, training, and upgrading program which will provide opportunities for the Navajo people. The Commission is particularly disturbed by the inadequate monitoring and understanding of the Navajo and Indian preference clauses by the Bureau of Indian Affairs. Not only is there inadequate staff in the field, but there is an inadequate understanding of what the preference clause is and how it is to be monitored. The Commissioner of Indian Affairs should at once develop procedures and guidelines to scrutinize employment programs and problems of contractors and suppliers in the private and public sectors as they relate to the employment of Indians.

This Commission's investigation of these issues did not begin with this week's hearing and neither will it end with it. The Commission's Office of General Counsel will pursue a number of matters in the next few weeks which have been revealed in these hearings. The Commission will then formulate its specific and detailed findings and recommendations. In accordance with Federal law, that report will be submitted to the President and the Congress. In addition, specific letters containing recommendations for action will be sent to each of the affected Cabinet departments and agencies. The report and related letters will also be made available to the press and the general public.

The Commission is grateful to all of the witnesses who came forward to testify, some traveling many miles and many hours to do so. As was mentioned at the outset, witnesses are protected by the provisions of Title 18, United States Code, Section 1505, which makes it a crime to threaten, intimidate, or injure witnesses on account of their attendance at Government proceedings. The Commission should be informed immediately of any allegations relating to possible intimidation of witnesses. Let me emphasize again that we consider this a very serious matter and will do all in our power to protect witnesses who have appeared at this hearing.

We would also like to express our appreciation to the Navajo Tribal Council for its cooperation and assistance and for the use of the Navajo Civic Center.

And, finally, I'd like to express the hope, on behalf of the entire United States Commission on Civil Rights, that this joint effort will help bring about some appropriate results. Given the problems of a century, my colleagues and I do not wish to raise false hopes, but I assure you that you have helped to educate two white Americans, one Southerner and one Northerner, a black American, and a Mexican American about the problems of the Native Americans. As I said at the beginning, we are not an enforcement agency. We are a study agency and a clearinghouse. Some have been kind and described us as the "conscience of the Government." History will have to judge the wisdom of that phrase.

I can assure you that our conscience is aroused, and we would hope that our actions do not end with this report, but that members of the Commission will continue to speak out before the appropriate committees of the Congress and with the administrators in the executive branch to attain the changes which are so clearly needed.

I will ask Dr. Billison at the conclusion of this hearing to be available to translate that final statement with any members of the audience who did not speak English. With that statement then, Dr. Billison, you can announce that after it.

We conclude these hearings at Window Rock, Arizona.

[Translation into Navajo.]

[At 9:30 p.m. the hearing was concluded.]

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